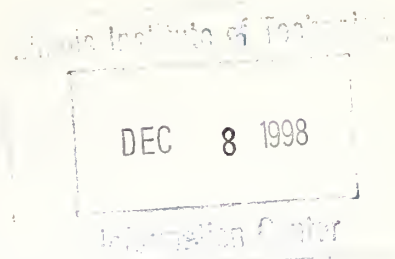


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**1998**

# ***Illinois Register***

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**Rules of Governmental Agencies**

Volume 22, Issue 49—December 04, 1998

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Administrative Code Div.  
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Secretary of State

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**Editor's Note:** The Cumulative Index and Sections Affected Index will be printed on a quarterly basis. The printing schedule for the quarterly and annual indexes are as follows:

April 17, 1998 - Issue 16: Through	March 31, 1998
July 17, 1998 - Issue 29: Through	June 30, 1998
October 16, 1998 - Issue 42: Through	September 30, 1998
January 15, 1999 - Issue 3: Through	December 31, 1998 (Annual)

## INTRODUCTION

The *Illinois Register* is the official state document for publishing public notice of rulemaking activity initiated by State governmental agencies. The table of contents is arranged categorically by rulemaking activity and alphabetically by agency within each category. The Register also contains a Cumulative Index listing alphabetically by agency the Parts (sets of rules) on which rulemaking activity has occurred in the current Register volume year and a Sections Affected Index listing by Title each Section (including supplementary material) of a Part on which rulemaking activity has occurred in the current volume year. Both indices are action coded and are designed to aid the public in monitoring rules.

Rulemaking activity consists of proposed or adopted new rules; amendments to or repealers of existing rules; and rules promulgated by emergency or peremptory action. Executive Orders and Proclamations issued by the Governor; notices of public information required by State statute; and activities (meeting agendas, Statements of Objection or Recommendation, etc.) of the Joint Committee on Administrative Rules (JCAR), a legislative oversight committee which monitors the rulemaking activities of State agencies; is also published in the Register.

The Register is a weekly update to the *Illinois Administrative Code* (a compilation of the rules adopted by State agencies). The most recent edition of the Code along with the Register comprise the most current accounting of State agencies' rules.

The Illinois Register is the property of the State of Illinois, granted by the authority of the Illinois Administrative Procedure Act [5 ILCS 100/1-1 et seq.].



## DEPARTMENT OF COMMERCE AND COMMUNITY AFFAIRS

## NOTICE OF PROPOSED AMENDMENTS

1) Heading of the Part: State Administration of the Federal Community Development Block Grant Program for Small Cities

2) Code Citation: 47 Ill. Adm. Code 110

3) Section Numbers: Proposed Action:

110.60 Amendment

110.80 Amendment

110.106 New Section

4) Statutory Authority: Implementing Title I of the Housing and Community Development Act of 1974 (42 USCA 5301) and Section 46.37 of the Civil Administrative Code of Illinois [20 ILCS 605/46.37]; and authorized by Section 46.42 of the Civil Administrative Code of Illinois [20 ILCS 605/46.42].

5) A Complete Description of the Subjects and Issues Involved: This rulemaking revises the program rules for the Community Development Assistance Program.

6) Will these proposed amendments replace an emergency rule currently in effect? No

7) Does this rulemaking contain an automatic repeal date? No

8) Do these proposed amendments contain incorporations by reference? No

9) Are there any other amendments pending on this Part? No

10) Statement of Statewide Policy Objectives: This rulemaking does not create or expand a State mandate as defined in Section 3(b) of the State Mandates Act [30 ILCS 805/3].

11) Time, Place, and Manner in which interested persons may comment on this proposed rulemaking: Interested persons may present their comments concerning this proposed rulemaking in writing within 45 days after this edition of the *Illinois Register* to the following:

Ms. Brenda Yager  
Department of Commerce and Community Affairs  
Bureau of Community Development  
620 East Adams Street, 5th Floor  
Springfield, Illinois 62701  
(217) 785-6174  
(217) 785-6055 (TDD)

12) Initial Regulatory Flexibility Analysis:

## DEPARTMENT OF COMMERCE AND COMMUNITY AFFAIRS

## NOTICE OF PROPOSED AMENDMENTS

A) Types of small businesses and small municipalities affected: These amendments will have no effect on small businesses. These amendments will have a positive affect on small municipalities with a lead-based paint problem by providing a source of financing to abate the problem.

B) Reporting, bookkeeping or other procedures required for compliance: These amendments do not affect the existing reporting, bookkeeping and other procedures necessary for compliance.

C) Types of professional skills necessary for compliance: Applicants would already possess the necessary skills for compliance.

13) Regulatory Agenda on which this rulemaking was summarized: This rule was not included on either of the 2 most recent agendas because: The agency did not anticipate the need for the proposed rulemaking at the time of the last regulatory agendas.

The full text of the Proposed Amendments begins on the next page:

## DEPARTMENT OF COMMERCE AND COMMUNITY AFFAIRS

## NOTICE OF PROPOSED AMENDMENTS

TITLE 47: HOUSING AND COMMUNITY DEVELOPMENT  
CHAPTER I: DEPARTMENT OF COMMERCE AND COMMUNITY AFFAIRS

PART 110  
STATE ADMINISTRATION OF THE FEDERAL COMMUNITY DEVELOPMENT  
BLOCK GRANT PROGRAM FOR SMALL CITIES

## SUBPART A: COMMUNITY DEVELOPMENT ASSISTANCE PROGRAM

## Section

110.10 Legislative Base  
110.20 Purpose and Scope  
110.30 Definitions  
110.35 Incorporation by Reference  
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110.50 Eligible Applicants  
110.60 Eligible/Ineligible Projects and Activities  
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110.100 Application Evaluation for Competitive Public Facilities and Competitive Housing Rehabilitation Components (Repealed)  
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110.104 Application Evaluation for Competitive Housing Rehabilitation Component  
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## Section

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## DEPARTMENT OF COMMERCE AND COMMUNITY AFFAIRS

## NOTICE OF PROPOSED AMENDMENTS

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110.360 Program Income Subject to the Act

AUTHORITY: Implementing Section 46.37 and authorized by Section 46.42 of the Civil Administrative Code of Illinois [20 ILCS 605/46.37 and 46.42].

SOURCE: Adopted and codified at 7 Ill. Reg. 2972, effective March 9, 1983; amended at 7 Ill. Reg. 7898, effective June 21, 1983; amended at 8 Ill. Reg. 16250, effective August 29, 1984; amended at 9 Ill. Reg. 7117, effective May 9, 1985; amended at 9 Ill. Reg. 10702, effective June 28, 1985; amended at 10 Ill. Reg. 10093, effective May 28, 1986; amended at 12 Ill. Reg. 2254, effective January 19, 1988; amended at 15 Ill. Reg. 4410, effective March 11, 1991; amended at 16 Ill. Reg. 20106, effective December 14, 1992; amended at 20 Ill. Reg. 7799, effective May 29, 1996; amended at 22 Ill. Reg. 1910, effective January 1, 1998; amended at 23 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_.

## SUBPART A: COMMUNITY DEVELOPMENT ASSISTANCE PROGRAM

## Section 110.60 Eligible/Ineligible Projects and Activities

a) Eligible Projects and Activities - Eligible activities are detailed in 24 CFR 570.482 (1992). Activities assisted by this program may include the following:

- 1) Economic Development - provision of assistance to private for-profit or not-for-profit businesses for such activities as land acquisition; public facilities and improvements in support of economic development (such as, water, sewer and utility lines); acquisition, construction, rehabilitation of commercial and industrial buildings/facilities; machinery and equipment; furnishings and fixtures; and working capital expenses.
- 2) Public Facilities and Improvements - acquisition, construction, reconstruction, rehabilitation or installation of public facilities, and improvements e.g., water and sewer facilities, including storm sewers; flood retention and drainage facilities.
- 3) Housing Rehabilitation and Preservation - provision of assistance in support of low to moderate-income housing, including rehabilitation, clearance, demolition, and/or removal of privately-owned buildings and provision of site improvements such

## DEPARTMENT OF COMMERCE AND COMMUNITY AFFAIRS

## NOTICE OF PROPOSED AMENDMENTS

as connection of residential structures to water or sewer lines; certain types of housing modernization; temporary relocation assistance; and code enforcement; and lead-based paint abatement.

4) Planning Assistance - planning activities which focus on the needs of low- and moderate-income persons in the community, including feasibility studies, data gathering, analyses, preparation of plans, and identification of implementing actions.

5) Removal of Architectural Barriers - structural improvements to government-owned buildings to remove physical barriers that restrict the mobility and accessibility of elderly and disabled persons in order to comply with the Americans with Disabilities Act, e.g., curb cuts necessary to access local government buildings, modifications to entrances and exits, parking improvements, modification of restroom facilities, and signage.

6) The remaining major eligible cost category under the Community Development Assistance Program is general program planning and administration. This area covers the local government operational costs of implementing a local program. It includes costs involved in preparing the environmental review; preliminary engineering, planning, and design fees for the project; the cost of the local program audit; and other contractual costs for professional services that are associated with the administration of the program. It excludes all pre-program costs, such as payment or reimbursement of application preparation fees, costs associated with conducting a local survey, etc. There is a 10% ceiling placed on general program planning and administration costs for any local program.

## b) Ineligible Projects and Activities -

- 1) Generally, any type of activity not described or referred to in Section 110.60(a) is considered ineligible.
- 2) The following is a selective list of examples of projects and activities that are generally ineligible: buildings used predominantly for the general conduct of government (e.g., city halls, courthouses, jails, police stations, etc.). This does not exclude historic preservation. General government expenses; political activities; purchase of construction equipment and purchase of equipment, fixtures, motor vehicles, furnishings, or other personal property not an integral structural fixture is generally ineligible. However, CDAP funds may be used to purchase or to pay depreciation or use allowances for such items when necessary if the administration of activities was assisted with CDAP funds. The costs associated with operating and maintaining public facilities and services are generally ineligible. New housing construction is ineligible, except as provided under the last resort housing provision set forth in 49 CFR 24 (1989), or, when carried out by a subrecipient pursuant to 570.204(a)(2) of the Act; income payments for housing or any other purpose (e.g., income maintenance, housing allowances, down

## DEPARTMENT OF COMMERCE AND COMMUNITY AFFAIRS

## NOTICE OF PROPOSED AMENDMENTS

payments, mortgage subsidies, etc.). All activities as listed in 24 CFR 570.482 (1992) and Section 105(a) of the Act are eligible. (Source: Amended at 23 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

## Section 110.80 Funding

- a) Distribution of Funds - Distribution of grant awards will be made according to the application evaluation process described in Sections 110.91, 110.92, 110.93, 110.94, 110.95, 110.100, 110.101, and 110.102, and 110.106 of this Part.

## b) Other Funding Considerations

1) Grant Ceilings: Grant ceilings establish the general limits that may be requested. The Department shall employ the factors listed in subsection (b)(1)(D) in authorizing a higher grant ceiling for a particular project. Individual grants will be funded only in amounts commensurate with the requirements of the proposed projects. The Department will set the following grant ceilings for applicants:

A) Components	Grant Ceiling
i) General Economic Development	\$500,000
ii) Competitive Public Facilities	\$400,000
Design Engineering	\$100,000
iii) Competitive Housing	\$400,000
Rehabilitation	
iv) Set-Aside for	\$100,000
Emergency Public Facilities	\$100,000
v) Removal of Architectural	
Barriers	\$150,000
vi) Planning	\$ 25,000
vii) Set-Aside for Lead-based	\$ 50,000
Paint Abatement	

B) Local governments may receive only one grant award under the program components of Competitive Public Facilities and Competitive Housing Rehabilitation, Competitive Removal of Architectural Barriers, and Competitive Planning Assistance. They are limited to submitting one application under the Competitive Public Facilities and the Competitive Housing Rehabilitation components in any one program year.

C) On occasion, the Department will review the technical feasibility of a project. If the review requires non-Departmental expertise (e.g., water and sewer permits), the Department will coordinate with other agencies (e.g., Environmental Protection Agency (EPA), Department of Public Health (DPH), USDA Rural Development ~~Farmers--Home Administration--(FHA)~~ to review the technical feasibility of the project.



## DEPARTMENT OF COMMERCE AND COMMUNITY AFFAIRS

## NOTICE OF PROPOSED AMENDMENTS

D) In determining appropriate individual grant amounts the Department shall consider the following:

- i) Project Need - Project need shall be determined using standards found in Sections 110.90(b)(3); 110.91(b)(3)(A), (C), (D), and (E); 110.92(b)(3); 110.93(b)(3); 110.94(b)(3); 110.95(b)(3); 110.100(c); 110.101(b); and 110.102(b), as applicable.
- ii) Ability to Carry Out the Project - Determination of the ability to successfully complete the proposed project shall be based upon elements such as previous program performance, experience, and scope of the proposed program.
- iii) Proposed Activities - A review of the proposed activities shall be based on a determination of whether the program objectives will be met through the proposed activities as set out in Sections 110.90, 110.91, 110.92, 110.93, 110.94, 110.95, and 110.105.

E) The Department may withdraw a commitment of funds if it is determined that a project will not progress. The conditions under which this shall occur are listed in 47 Ill. Adm. Code 1.110.

2) Standards for Program Category Allocation: The Department shall determine the amount of funds annually allocated to carry out activities in accordance with each of the community development assistance program categories. Need expressed by interested citizens and local elected officials pursuant to Section 110.10(b)(2)(C), the amount of annual allocation, and a review of past program component usage shall be factors in determining the amount of funds annually allocated to carry out activities. The allocation of funds between program components shall be determined from the following allocation ranges:

- A) Set-Aside for Emergency Public Facilities -- 1% - 20%
- B) Competitive Housing Rehabilitation -- 14% - 60%
- C) Competitive Public Facilities -- 40% - 60%
- D) General Economic Development -- 10% - 40%
- E) Removal of Architectural Barriers -- 1% - 10%
- F) Planning -- up to 1%
- G) Set-Aside for Lead-Based Paint Abatement -- up to 1%

3) Environmental Clearances: Upon actual grant award, a technical review of non-exempt activities must be completed, if required, under 24 CFR 58 (1984). HUD has published Environmental Review Procedures for the Community Development Block Grant (24 CFR 58).

4) On-Site Visits: The Department's program staff may, contingent upon program resources or the need for on-site inspection to verify eligibility, conduct field visits of potential grantees under the Competitive Public Facilities and Competitive Housing Rehabilitation components prior to final grant decisions.

## DEPARTMENT OF COMMERCE AND COMMUNITY AFFAIRS

## NOTICE OF PROPOSED AMENDMENTS

(Source: Amended at 23 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

**Section 110.106 Set-Aside for Emergency Lead-Based Paint Abatement Component**

In order to respond to lead-based paint poisoning problems, funds will be made available on an "as needed" basis. There is no application deadline for this set-aside. Awards could be made to communities that are faced with an immediate threat to health and safety to children 6 and under exposed to lead paint. If no situations arise that warrant this type of assistance, the set-aside funds will be reallocated at the end of the program year to the competitive public facilities component.

a) Project Eligibility Criteria - For a project to be eligible for funding under this component, applicants must document the following:

- 1) 100 percent of those benefiting from the project will be low-to-moderate income persons (as defined in Section 110.30 of this Part);
- 2) 100 percent of project costs may be paid from CDAP funds except in those instances involving rental property owned by a non-low-to-moderate income person. If the rental property is occupied by a low-to-moderate income family, but is owned by a non-low-to-moderate income person, then the rental property owner must contribute at least 50 percent of the costs of the actual lead-based paint abatement;
- 3) One or more income eligible families living in the community have children six or under who have lead poisoning or are in imminent danger of lead poisoning;
- 4) The project is ready to proceed and expend funds; and
- 5) A community action agency determined by the Department to have the capacity to undertake lead-based paint abatement will be used to manage the project.

b) Application Review and Approval

- 1) Funds will be made available on an as needed basis through a non-competitive process until all funds are obligated.
- 2) Applications shall be prepared and submitted to the Department as specified in Section 110.70 of this Part.

(Source: Added at 23 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

## DEPARTMENT OF NATURAL RESOURCES

## NOTICE OF PROPOSED AMENDMENTS

- 1) Heading of the Part: General Definitions
- 2) Code Citation: 62 Ill. Adm. Code 1701
- 3) Section Number: Proposed Action:  
1701.Appendix A Amend
- 4) Statutory Authority: Implemented and authorized by the Surface Coal Mining Land Conservation and Reclamation Act [225 ILCS 720].
- 5) A Complete Description of the Subjects and Issues Involved: The Energy Policy Act of 1992 amended the Surface Mining Control and Reclamation Act, which is the federal law after which Illinois' surface mining and reclamation program is modeled. Subsequent to these amendments, the federal Office of Surface Mining notified the Department that its rules were no longer as effective as counterpart federal rules, given the Energy Policy Act of 1992 amendments. The purpose of this amendment is to bring Illinois' program in line with and make it as effective as all counterpart federal law and regulations.

The proposed amendments require underground mine operators to monitor landowner water supplies and the condition of buildings prior to subsidence. Any water loss or building damage resulting from subsidence must be repaired or replaced.

- 6) Will this proposed rule replace an emergency rule currently in effect? No
- 7) Does this rulemaking contain an automatic repeal date? No
- 8) Does this proposed amendments contain incorporations by reference? No
- 9) Are there any other amendments pending on this Part? No
- 10) Statement of Statewide Policy Objectives: The proposed amendments will have no impact upon units of local government
- 11) Time, Place, and Manner in which interested persons may comment on this Proposed rulemaking: Written comments may be submitted within 45 days after the publication of this notice to:

Karen E. Jacobs, Legal Counsel  
Illinois Department of Natural Resources  
524 South Second Street  
Springfield IL 62701  
(217) 782-1809

- 12) Initial Regulatory Flexibility Analysis:

## DEPARTMENT OF NATURAL RESOURCES

## NOTICE OF PROPOSED AMENDMENTS

- A) Types of small businesses, small municipalities and not for profit corporations affected: None
- B) Reporting, bookkeeping or other procedures required for compliance: None
- C) Types of professional skills necessary for compliance: None
- 13) Regulatory Agenda on which this rulemaking was summarized: This rulemaking was not included on either of the 2 most recent regulatory agendas because: The Department neglected to file a regulatory agenda on this Part.

The full text of the Proposed Amendments begins on the next page.

## DEPARTMENT OF NATURAL RESOURCES

## NOTICE OF PROPOSED AMENDMENTS

## TITLE 62: MINING

## CHAPTER 1: DEPARTMENT OF NATURAL RESOURCES

## PART 1701

## GENERAL DEFINITIONS

Section  
1701.5 Definitions  
APPENDIX A Definitions

AUTHORITY: Implementing and authorized by the Surface Coal Mining Land Conservation and Reclamation Act [225 ILCS 720].

SOURCE: Adopted at 4 Ill. Reg. 37, p. 1, effective June 1, 1982; amended at 6 Ill. Reg. 1, effective June 1, 1982; codified at 8 Ill. Reg. 4932; amended at 11 Ill. Reg. 8075, effective July 1, 1987; amended at 14 Ill. Reg. 11800, effective January 1, 1991; amended at 15 Ill. Reg. 17141, effective January 1, 1992; amended at 17 Ill. Reg. 10947, effective July 1, 1993; amended at 20 Ill. Reg. 1962, effective January 19, 1996; recodified from the Department of Mines and Minerals to the Department of Natural Resources at 21 Ill. Reg. 16192; amended at 22 Ill. Reg. 20169, effective November 5, 1998; amended at 23 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_.

## DEPARTMENT OF NATURAL RESOURCES

## NOTICE OF PROPOSED AMENDMENTS

## Section 1701.APPENDIX A Definitions

As used in 62 Ill. Adm. Code 1700 through 1850, the following terms have the specified meanings, except when another meaning is given:

"Acid drainage" means water with a pH of less than 6.0 and in which total acidity exceeds total alkalinity, discharged from an active, inactive or abandoned surface coal mine and reclamation operation or from an area affected by surface coal mining and reclamation operations.

"Acid - forming materials" means earth materials that contain sulfide minerals or other materials which, if exposed to air, water or weather processes, form acids that may create acid drainage.

"Act" or "Federal Act" means the Surface Mining Control and Reclamation Act of 1977, P.L. 95-87. (30 USC 8-S-E- 1201 et seq.).

"Adjacent area" means the area located outside the permit area, or shadow area, where a resource or resources, determined according to the context in which adjacent area is used, are or reasonably could be expected to be adversely impacted by proposed mining operations.

"Administratively complete application" means an application for permit approval or approval for coal exploration where required, which the Department determines to contain information addressing each application requirement of the regulatory program and to contain all information necessary to initiate processing and public review.

"Affected area" means, with respect to surface mining activities, any land or water upon or in which those activities are conducted or located. With respect to underground mining activities, affected area means: any water or surface land upon which those activities are conducted or located.

"Agricultural use" means the use of any tract of land for the production of animal or vegetable life. The uses include, but are not limited to, the pasturing, grazing, and watering of livestock, and the cropping, cultivation, and harvesting of plants.

"Applicant" means any person seeking a permit; permit revision; renewal; or transfer, assignment or sale from the Department to conduct surface coal mining and reclamation operations or, where required, seeking approval for coal exploration.

"Applicant Violator System or AVS" means the computer system maintained by OSM to identify ownership or control links involving permit applicants, permittees, and persons cited in violation notices.



## DEPARTMENT OF NATURAL RESOURCES

## NOTICE OF PROPOSED AMENDMENTS

"Application" means the documents and other information filed with the Department under these regulations for the issuance of permits; revisions; renewals; and transfer, assignment, or sale of permit rights for surface coal mining and reclamation operations or, where required, for coal exploration.

"Approximate original contour" means that surface configuration achieved by backfilling and grading of the mined areas so that the reclaimed area, including any terracing or access roads, closely resembles the general surface configuration of the land prior to mining and blends into and complements the drainage pattern of the surrounding terrain, with all highwalls, and spoil piles and coal refuse piles eliminated. Permanent water impoundments may be permitted where the Department has determined that they comply with 62 Ill. Adm. Code 1816.49 and 1816.56, 1816.133 or 1817.49, 1817.56 and 1817.133. Section 1.03(a)(2) of the Surface Coal Mining Land Conservation and Reclamation Act [225 ILCS 720/1.03(a)(2)].

"Aquifer" means a zone, stratum, or group of strata that can store and transmit water in sufficient quantities for specific use.

"Article" means an article of the State Act.

"Auger mining" means a method of mining coal at a cliff or highwall by drilling holes into an exposed coal seam from the cliff or highwall and transporting the coal along an auger bit to the surface.

"Best technology currently available" means equipment, devices, systems, methods, or techniques which will

prevent, to the extent possible, additional contributions of suspended solids to stream flow or runoff outside the permit area, but in no event result in contributions of suspended solids in excess of requirements set by 62 Ill. Adm. Code 1816.42; and

minimize, to the extent possible, disturbances and adverse impacts on fish, wildlife and related environmental values, and achieve enhancement of those resources where practicable. The term includes equipment, devices, systems, methods, or techniques which are currently available anywhere as determined by the Department, even if they are not in routine use. The term includes, but is not limited to, construction practices, siting requirements, vegetative selection and planting requirements, animal stocking requirements, scheduling of activities and design of sedimentation ponds in accordance with 62 Ill. Adm. Code 1816 and 1817.

"Boxcut" means the first open cut resulting in the placing of

## DEPARTMENT OF NATURAL RESOURCES

## NOTICE OF PROPOSED AMENDMENTS

overburden on unmined land adjacent to the initial pit.

"Cemetery" means any area of land where human bodies are interred.

"Coal" means combustible carbonaceous rock, classified as anthracite, bituminous, subbituminous, or lignite by ASTM Standard D 388-84 found at pp. 247-252 in Vol 5.05 of the Annual Book of ASTM Standards published by the American Society for Testing and Materials, 1916 Race St., Philadelphia PA 19103.

"Coal exploration" means the field gathering of:

surface or subsurface geologic, physical, or chemical data by mapping, trenching, drilling, geophysical, or other techniques necessary to determine the quality and quantity of overburden and coal of an area; or

the gathering of environmental data to establish the conditions of an area before beginning surface coal mining and reclamation operations under the requirements of 62 Ill. Adm. Code 1700 through 1850.

"Coal mine waste" means coal processing waste and underground development waste.

"Coal mining operation" means the business of developing, producing, preparing or loading bituminous coal, subbituminous coal, anthracite, or lignite, or of reclaiming the area upon which such activities occur.

"Coal processing or coal preparation" means chemical or physical processing and the cleaning, concentrating, or other processing or preparation of coal.

"Coal preparation plant" means a facility where coal is subjected to chemical or physical processing or the cleaning, concentrating, or other processing or preparation. It includes facilities associated with coal preparation activities including, but not limited to the following: loading facilities; storage and stockpile facilities; sheds, shops and other buildings; water treatment and water storage facilities; settling basins and impoundments; coal processing and other waste disposal areas.

"Coal processing waste" means earth materials which are separated and wasted from the product coal during cleaning, concentrating, or other processing or preparation of coal.

"Combustible material" means organic material that is capable of

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burning, either by fire or through oxidation, accompanied by the evolution of heat and a significant temperature rise.

"Community or institutional building" means any structure, other than a public building or an occupied dwelling, which is used primarily for functions of community groups; used for an educational, cultural, historic, religious, scientific, correctional, mental-health or physical-health care facility; or is used for public services, including, but not limited to, water supply, power generation or sewage treatment.

"Compaction" means increasing the density of a material by reducing the voids between the particles and is generally accomplished by controlled placement and mechanical effort such as from repeated application of wheel, track, or roller loads from heavy equipment.

"Complete and accurate application" means an application for permit approval or approval for coal exploration where required, which the Department determines contains all information which the State Act and 62 Ill. Adm. Code 1700-1850 require.

"Consolidated material" means materials of sufficient hardness or stability to resist weathering so as to inhibit erosion or sloughing.

"Cropland" means land used for the production of adapted crops for harvest, alone or in a rotation with grasses and legumes, and includes row crops, small grain crops, hay crops, nursery crops, orchard crops, and other similar specialty crops.

"Cumulative impact area" means the area, including the permit area, within which impacts resulting from the proposed operation may interact with the impacts of all anticipated mining on surface and groundwater systems. Anticipated mining shall include, at a minimum, the entire projected lives through bond release of:

the proposed operation;

all existing operations;

any operation for which a permit application has been submitted to the Department.

"Darkened surface soil" means mineral horizons formed at or adjacent to the surface of the soil which are higher in organic matter content, and visibly darker in color than the immediately underlying horizons.

"Department" means the Illinois Department of Natural Resources, Office of Mines and Minerals, or its successor.

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"Direct financial interest" means ownership or part ownership by an employee of lands, stocks, bonds, debentures, warrants, partnership shares, or other holdings and also means any other arrangement where the employee may benefit from his or her holding in or salary from coal mining operations. Direct financial interests include employment, pensions, creditor, real property, and other financial relationships.

"Director" means the Director of the Department of Natural Resources.

"Disturbed area" means an area where vegetation, topsoil, or overburden is removed or upon which topsoil, spoil, coal processing waste, underground development waste, or noncoal waste is placed by surface coal mining operations. Those areas are classified as disturbed until reclamation is complete and the performance bond or other assurance of performance required by 62 Ill. Adm. Code 1800 is released.

"Diversion" means a channel, embankment, or other man-made structure constructed to divert water from one area to another.

"Downslope" means the land surface between the projected outcrop of the lowest coalbed being mined along each highwall and a valley floor.

"Drinking, domestic or residential water supply" means water received from a well or spring and any appurtenant delivery system that provides water for direct human consumption or household use. Wells and springs that serve only agricultural, commercial or industrial enterprises are not included except to the extent the water supply is for direct human consumption, human sanitation, or domestic use.

"Embankment" means an artificial deposit of material that is raised above the natural surface of the land and used to contain, divert, or store water, support roads or railways, or for other similar purposes.

"Employee" means

any person employed by the Department who performs any function or duty under the Act; and

advisory board or commission members and consultants who perform any function or duty under the Act, if they perform decision-making functions for the Department under the authority of State law or regulations. However, members of advisory boards or commissions established in accordance with State law or regulations to represent multiple interests are not considered to be employees. State officials may through State law or regulations expand this definition to meet their program needs.

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"Ephemeral stream" means a stream which meets both requirements:

It flows only in direct response to precipitation in the immediate watershed or in response to the melting of a cover of snow and ice; and

It has a channel bottom that is always above the local water table.

"Excess spoil" means spoil material disposed of in a location other than the mined-out area; provided, the spoil material used to achieve the approximate original contour or to blend the mined-out area with the surrounding terrain in accordance with 62 Ill. Adm. Code 1816.102(d) and 1817.102(d) in nonsteep slope areas shall not be considered excess spoil.

"Existing structure" means a structure used in connection with surface coal mining and reclamation operations for which construction began prior to June 1, 1982.

"Federal Director" means the Director of the Federal Office of Surface Mining Reclamation and Enforcement.

"Federal violation notice" means a violation notice issued by OSM or by another agency or instrumentality of the United States.

"Final cut" means the last pit created in a surface-mined area.

"Fragile lands" means geographic areas containing important natural, ecologic, scientific or esthetic resources that could be damaged or destroyed by surface coal mining operations. Examples of fragile lands include valuable habitats for fish or wildlife, critical habitats for endangered or threatened species of animals or plants, uncommon geologic formations, National Natural Landmark sites, areas where mining may cause flooding, environmental corridors containing a concentration of ecologic and esthetic features, areas of recreational value due to high environmental quality, and buffer zones adjacent to the boundaries of areas where surface coal mining operations are prohibited under Section 7.01 of the State Act [225 ILCS 720/7.01] and 62 Ill. Adm. Code 1761.11, if those areas have characteristics requiring additional areal protection or if the buffer zone itself contains fragile resources.

"Fugitive dust" means that particulate matter not emitted from a duct or stack which becomes airborne due to the forces of wind or surface coal mining and reclamation operations or both. During surface coal mining and reclamation, it may include emissions from haul roads; wind erosion of exposed surfaces, storage piles, and spoil piles;

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reclamation operations; and other activities in which material is either removed, stored, transported, or redistributed.

"Gravity discharge" means, with respect to underground mining activities, mine drainage that flows freely in an open channel downgradient. Mine drainage that occurs as a result of flooding a mine to the level of the discharge is not gravity discharge.

"Ground cover" means the area of ground covered by the combined aboveground parts of vegetation and by the litter that is produced naturally on site.

"Ground water" means subsurface water that fills available openings in rock or soil materials to the extent that they are considered water saturated.

"Head-of-hollow fill" means a fill structure consisting of any material, other than organic material, placed in the uppermost reaches of a hollow where side slopes of the existing hollow measured at the steepest point are greater than 20 degrees or the average slope of the profile of the hollow from the toe of the fill to the top of the fill is greater than ten degrees. In head-of-hollow fills, the top surface of the fill, when completed, is at approximately the same elevation as the adjacent ridge line, and no significant area of natural drainage occurs above the fill draining into the fill area.

"High capability land" means land not meeting the definition of prime farmland or land exempted in accordance with 62 Ill. Adm. Code 1785.17 where the Department determines the following three facts are present together:

The land is capable of being reclaimed for row-crop agricultural purposes;

The land is suitable for row-crop agricultural purposes based on United States Soil Conservation Service soil survey classifications of the affected land prior to mining (all soil types in capability Classes I, II, III and those soil types in capability Class IV with slopes of five percent or less), as set forth in Land-Capability Classification, Agriculture Handbook No. 210, published by the U.S. Department of Agriculture, Soil Conservation Service in 1973; and

The optimum future use of the land is for row-crop agricultural purposes.

"Highwall" means the face of exposed overburden and coal in an open cut of a surface coal mining activity or for entry to underground



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mining activities.

"Highwall remnant" means that portion of highwall that remains after backfilling and grading of a remining permit area.

"Higher or better uses" means post-mining land uses that have a higher economic value or nonmonetary benefit to the landowner or the community than the premining land uses.

"Historically used for cropland" means:

Lands that have been used for cropland for any five years or more out of the ten years immediately preceding the acquisition, including purchase, lease, or option, of the lands for the purpose of conducting or allowing through resale, lease or option, the conduct of surface coal mining and reclamation operations;

Lands that the Department determines, on the basis of additional cropland history of the surrounding lands and the lands under consideration that the permit area is clearly cropland but falls outside the specific five-years-in-ten criterion, in which case the regulations for prime farmland shall be applied to include more years of cropland history only to increase the prime farmland acreage to be preserved; or

Lands that would likely have been used as cropland for any five out of the last ten years, immediately preceding such acquisition but for the same fact of ownership or control of the land unrelated to the productivity of the land.

"Historic lands" means, for purposes of implementing 62 Ill. Adm. Code 1762 and 1764, important historic, cultural, and scientific areas that could be damaged or be destroyed by surface coal mining operations. Examples of historic lands include archaeological and paleontological sites, National Historic Landmark sites, sites listed on or eligible for listing on a State or National Register of Historic Places, sites having religious or cultural significance to native Americans or religious groups or sites for which historic designation is pending.

"Hydrologic balance" means the relationship between the quality and quantity of water inflow to, water outflow from, and water storage in a hydrologic unit such as a drainage basin, aquifer, soil zone, lake, or reservoir. It encompasses the dynamic relationships among precipitation, runoff, evaporation, and changes in ground and surface water storage.

"Hydrologic regime" means the entire state of water movement in a

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given area. It is a function of the climate and includes the phenomena by which water first occurs as atmospheric water vapor, passes into a liquid or solid form, falls as precipitation, moves along or into the ground surface, and returns to the atmosphere as vapor by means of evaporation and transpiration.

"Imminent danger to the health and safety of the public" means the existence of any condition or practice, or any violation of a permit or other requirements of the State Act in a surface coal mining and reclamation operation, which could reasonably be expected to cause substantial physical harm to persons outside the permit area before the condition, practice, or violation can be abated. A reasonable expectation of death or serious injury before abatement exists if a rational person, subjected to the same condition or practice giving rise to the peril, would avoid exposure to the danger during the time necessary for abatement. Section 1.03(a)(7) of the Surface Coal Mining Land Conservation and Reclamation Act [225 ILCS 720/1.03(a)(7)].

"Impounding structure" means a dam, embankment, or other structure used to impound water, slurry, or other liquid or semi-liquid material.

"Impoundment" means a closed basin, naturally formed or artificially built, which is dammed or excavated for the retention of water, sediment, or waste.

"Indirect financial interest" means the same financial relationships as for direct ownership, but where the employee reaps the benefits of such interests, including interests held by his or her spouse, minor child and other relatives, including in-laws, residing in the employee's home. The employee will not be deemed to have an indirect financial interest if there is no relationship between the employee's duties and the coal mining operation in which the spouse, minor children, or other resident relatives hold a financial interest.

"In situ processes" means activities conducted in connection with in-place distillation, retorting, leaching, or other chemical or physical processing of coal. The term includes, but is not limited to, in situ gasification, in situ leaching, slurry mining, solution mining, borehole mining, and fluid recovery mining.

"Interagency Committee" means the Interagency Committee on Surface Mining Control and Reclamation Section 1.05 of the State Act created.

"Intermittent stream" means:

A stream or reach of a stream that drains a watershed of at least one {+} square mile; or

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A stream or reach of a stream that is below the local water table for at least some part of the year, and obtains its flow from both surface runoff and ground water discharge.

"Irreparable damage to the environment" means any damage to the environment in violation of the State Act or these regulations that cannot be corrected by actions of the applicant.

"Land capability" means the soils' remaining capabilities based on the United States Department of Agriculture, Soil Conservation Service classification system as found in Agriculture Handbook No. 210, Land-Capability Classification, (published in 1973) as interpreted from the soils map for sustained production of commonly cultivated crops or for the production of permanent vegetation.

"Land eligible for remining" means those lands that would otherwise be eligible for expenditures under Section 402(g)(4) or Section 404 of the Surface Mining Control and Reclamation Act of 1977 (30 USC 8-S-6-1232(g)(4), 1234).

"Land use" means specific uses or management-related activities, rather than the vegetation or cover of the land. Land uses may be identified in combination when joint or seasonal uses occur and may include land used for support facilities that are an integral part of the use. Changes of land use or uses from one of the following categories to another shall be considered as a change to an alternative land use which is subject to approval by the Department in accordance with 62 Ill. Adm. Code 1780.23.

"Cropland" means land used for the production of adapted crops for harvest, alone or in a rotation with grasses and legumes, and includes row crops, small grain crops, hay crops, nursery crops, orchard crops, and other similar specialty crops. Allowable support facilities include access roads, farm buildings, hedgerows, erosion control structures such as grassed waterways, terraces and sediment ponds, and other incidental facilities related to cropland management, except that no facility, other than erosion control structures, may be located on prime farmland.

"Pastureland" means land used primarily for the long-term production of adapted, domesticated forage plants to be grazed by the livestock or occasionally cut and cured for livestock feed. Allowable support facilities include access roads, farm buildings, erosion control structures such as grassed waterways, downdrains, terraces and sediment ponds, water impoundments used for stock watering, and other incidental facilities related to pasture management.

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"Grazingland" means land used for grasslands and forest lands where the indigenous vegetation is actively managed for grazing, browsing, or occasional hay production.

"Forestry" means land used or managed for the long-term production of wood, wood fiber, or wood-derived products. Allowable support facilities include water impoundments, access and fire control lanes, erosion control structures such as grassed waterways, downdrains, terraces and sediment ponds, and other incidental facilities related to sound multiple use management of the forest resource.

"Residential" means land used for single- and multiple-family housing, mobile home parks, and other residential lodgings.

"Industrial/Commercial" means land used for:

Extraction or transformation of materials for fabrication of products, wholesaling of products, or for long-term storage of products. This includes all heavy and light manufacturing facilities.

Retail or trade of goods or services, including hotels, motels, stores, restaurants, and other commercial establishments.

"Recreation" is land used for public or private leisure-time use, including developed recreation facilities such as parks, camps, and amusement areas, as well as areas for less intensive uses such as hiking, canoeing, and other undeveloped recreational uses. Allowable support facilities include water impoundments, access roads, and other incidental facilities related to the recreational development of the area.

"Fish and wildlife habitat" is land dedicated wholly or partially to the production, protection, or management of fish or wildlife. Allowable support facilities include water impoundments, access lanes, erosion control structures such as grassed waterways, downdrains, terraces and sediment ponds, and other incidental facilities related to sound fish and wildlife management practices.

"Developed water resources" includes land used for storing water for beneficial uses such as stockpounds, irrigation, fire protection, flood control, and water supply. Where appropriate, developed water resources are considered a joint or seasonal use with cropland, pastureland, forestry, recreation and fish and wildlife habitat.

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"Undeveloped land or no current use or land management" includes land that is undeveloped or, if previously developed, land that has been allowed to return naturally to an undeveloped state or has been allowed to return to forest through natural succession. A post-mining designation of undeveloped land shall not be allowed for any land which is proposed to be affected by the mining operation.

"Material damage", in the context of Sections 1784.20 and 1817.121 of this Part, means:

Any functional impairment of surface lands, features, structures or facilities;

Any physical change that has a significant adverse impact on the affected land's capability to support any current or reasonably foreseeable uses or causes significant loss in production or income; or

Any significant change in the condition, appearance or utility of any structure or facility from its pre-subsidence condition.

"Mining operations or surface coal mining operations" means both surface mining operations and underground mining operations. Section 1.03(a)(11) of the Surface Coal Mining Land Conservation and Reclamation Act [225 ILCS 720/1.03(a)(11)].

"Moist bulk density" means the weight of soil (oven dry) per unit volume. Volume is measured when the soil is at field moisture capacity (1/3 bar moisture tension). Weight is determined after drying the soil at one-hundred-and-five-degrees-± 105° C±.

"MSHA" means the Mine Safety and Health Administration of the United States Department of Labor.

"Mulch" means vegetation residues or other suitable materials that aid in soil stabilization and soil moisture conservation, thus providing micro-climatic conditions suitable for germination and growth.

"Natural hazard lands" means geographic areas in which natural conditions exist which pose or, as a result of surface coal mining operations, may pose a threat to the health, safety or welfare of people, property or the environment, including areas subject to landslides, cave-ins, large or encroaching sand dunes, severe wind or soil erosion, frequent flooding, avalanches, and areas of unstable geology.

"Noxious plants" means any plant species listed as a "noxious weed"

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under regulations authorized by the Illinois Noxious Weed Law [505 ILCS 100]; any plant species whose seed is listed as a "prohibited (primary) noxious weed" or "restricted" (secondary) noxious weed" or "weed seeds" under regulations authorized by the Illinois Seed Law [505 ILCS 110]; or any plant which the Department of Agriculture has declared a pest under the Illinois Pesticide Act [415 ILCS 60].

"Occupied dwelling" means any building that is currently being used on a regular or temporary basis for human habitation.

"Office" means the Office of Surface Mining Reclamation and Enforcement, U.S. Department of the Interior.

"Operator" means any person engaged in coal mining who removes or intends to remove more than 250 tons of coal from the earth or from coal refuse piles by mining within 12 consecutive calendar months in any one location.

"Outslope" means the face of the spoil or embankment sloping downward from the highest elevation to the toe.

"Overburden" means material of any nature, consolidated or unconsolidated, that overlies a coal deposit, excluding topsoil.

"Ownership or control link" means any relationship included in the definition of owned or controlled or owns or controls at 62 Ill. Adm. Code 1773.5(a) and (b) or in the violations review provisions of 62 Ill. Adm. Code 1773.15(b). It includes any relationship presumed to constitute ownership or control under the definition of "owned or controlled" or "owns or controls" unless such presumption has been successfully rebutted under the provisions of 62 Ill. Adm. Code 1773.24 and 1773.25.

"Perennial stream" means a stream that flows continuously during all of the calendar year or part of a stream that flows continuously during all of the calendar year. The stream or part of a stream flows continuously as a result of groundwater discharge or surface runoff. The term does not include intermittent stream or ephemeral stream.

"Performance bond" means a surety bond, collateral bond or a combination thereof, by which a permittee assures faithful performance of all the requirements of the Federal Act, the State Act, 62 Ill. Adm. Code 1700 through 1850, and the requirements of the permit and reclamation plan.

"Performing any function or duty under this Act" means those decisions or actions, which if an employee performed or did not perform would affect the programs under the State Act.



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"Permanent diversion" means a diversion remaining after surface coal mining and reclamation operations are completed which has been approved for retention by the Department and other appropriate State and Federal agencies.

"Permanent impoundment" means an impoundment which the Department approved and, if required, is approved by other State and Federal agencies for retention as part of the post-mining land use.

"Permit" means a permit to conduct surface coal mining and reclamation operations which the Department issues pursuant to the State program.

"Permit area" means the area of land and water within the boundaries of the permit which are designated on the permit application maps, as approved by the Department. This area shall include all areas which are or will be affected by the surface coal mining and reclamation operations during the term of the permit indicated on the approved map which the operator submitted with the operator's application and which is required to be bonded under 62 Ill. Adm. Code 1800 and where the operator proposes to conduct surface coal mining and reclamation operations under the permit, including all disturbed areas; provided, that areas adequately bonded under another valid permit may be excluded from a permit area. The permit area excludes the area defined in these regulations as the shadow area.

"Permit term" means the period during which the permittee may engage in mining and reclamation operations under the permit. Section 1.03(a)(18) of the Surface Coal Mining Land Conservation and Reclamation Act [225 ILCS 720/1.03(a)(18)].

"Permittee" means a person holding or required by the State Act or these regulations to hold a permit to conduct surface coal mining and reclamation operations issued by a Department pursuant to a State program.

"Person" means an individual, Indian tribe when conducting surface coal mining and reclamation operations on non-Indian lands, general partnership, limited partnership, business trust association, society, joint venture, joint stock company, firm, company, corporation, cooperative or other business organization or any agency, unit, or instrumentality of Federal, State or local government including any publicly-owned utility or publicly-owned corporation of Federal, State or local government.

"Person having an interest which is or may be adversely affected" or "Person with a valid legal interest" shall include any person:

Who uses any resources of economic, recreational, esthetic, or

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environmental value that may be adversely affected by coal exploration or surface coal mining and reclamation operations or any related action of the Secretary or the Department; or

Whose property is or may be adversely affected by coal exploration or surface coal mining and reclamation operations or any related action of the Secretary or the Department.

"Placeland" means undisturbed land before any mining activity.

"Precipitation event" means a quantity of water resulting from drizzle, rain, snow, sleet, or hail in a limited period of time. It may be expressed in terms of recurrence interval. As used in these regulations, precipitation event also includes that quantity of water emanating from snow cover as snow-melt in a limited period of time.

"Previously mined area" means land that had been mined before August 3, 1977 that has not been reclaimed to the standards of 62 Ill. Adm. Code 1700 to 1850.

"Prime farmland" means those lands which are defined by the Secretary of Agriculture in 7 CFR 657 (43 Fed. Reg. 4031 (1978)) and which have historically been used for cropland as that phrase is defined above.

"Principal shareholder" means any person who is the record or beneficial owner of ten percent or more of any class of voting stock.

"Prohibited financial interest" means any direct or indirect financial interest in any coal mining operation.

"Property to be mined" means both the surface and mineral estates within the permit area and the mineral estate within the shadow area.

"Public building" means any structure that is owned or leased and principally used by a public government agency for public business or meetings.

"Public office" means a facility under the control of a governmental entity which is open to public access on a regular basis during reasonable business hours.

"Public park" means an area or portion of an area dedicated or designated by any Federal, State, or local agency primarily for public recreational use, whether or not such use is limited to certain times or days, including any land leased, reserved or held open to the public because of that use.

"Publicly-owned park" means a public park that is owned by a Federal,

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State or local governmental entity.

"Public road" means a road:

which has been designated as a public road pursuant to the law of the jurisdiction in which it is located;

which is maintained with public funds in a manner similar to other public roads of the same classification within the jurisdiction;

for which there is substantial (more than incidental) public use; and

which meets road construction standards for other public roads of the same classification in the local jurisdiction.

"Qualified registered professional engineer" means a civil engineer, mining engineer, environmental engineer or general engineer meeting the requirements of Section 9 of the Illinois Professional Engineering Act [225 ILCS 325/9].

"Rangeland" means land on which the natural potential (climax) plant cover is principally native grasses, forbs, and shrubs valuable for forage. This land includes natural grasslands and savannahs, such as prairies, and juniper savannahs, such as brushlands. Except for brush control, management is primarily achieved by regulating the intensity of grazing and season of use.

"Reasonably available spoil" means spoil and suitable coal mine waste material generated by the re-mining operation or other spoil or suitable coal mine waste material located in the permit area that is accessible and available for use and that when rehandled will not cause a hazard to public safety or significant damage to the environment.

"Recharge capacity" means the ability of the soils and underlying materials to allow precipitation and runoff to infiltrate and reach the zone of saturation.

"Reclamation" means those actions which these regulations require to restore mined land to a post-mining land use which the Department has approved. These actions do not include subsidence control measures conducted in the shadow area to restore damaged land to pre-mining capability.

"Recurrence interval" means the interval of time in which a precipitation event is expected to occur once, on the average. For

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example, the ten-year, 24-hour precipitation event would be that 24-hour precipitation event expected to occur on the average once in ten years.

"Reference area" means a land unit maintained under appropriate management for the purpose of measuring vegetation ground cover, productivity and plant species diversity that are produced naturally or by Department-approved crop production methods. Reference areas must be representative of geology, soil, slope, and vegetation in the permit area.

"Refuse pile" means a surface deposit of coal mine waste that does not impound water, slurry, or other liquid or semi-liquid material.

"Regional Director ~~director~~" means Regional Director of the Federal Office of Surface Mining Reclamation and Enforcement or Regional Director of the Federal Office of Surface Mining Reclamation and Enforcement's representative.

"Regulatory program" means Illinois' permanent regulatory program which the Office of Surface Mining Reclamation and Enforcement approved and set forth in 30 CFR 913.1-913.16 (1994). 30 CFR 913.1-913.16 do not include any subsequent amendments or editions.

"Remining" means conducting surface coal mining and reclamation operations which affect previously mined areas.

"Renewable resource lands" means aquifers and areas for the recharge of aquifers and other underground waters, areas for agricultural or silvicultural production of food and fiber, and grazing lands.

"Replacement of water supply" means, with respect to protected water supplies contaminated, diminished or interrupted by coal mining operations, provision of water supply on both a temporary and permanent basis equivalent to premining quantity and quality. Replacement includes provision of an equivalent water delivery system and payment of operation and maintenance costs in excess of customary and reasonable delivery costs for premining water supplies.

Upon agreement by the operator and the water supply owner, the obligation to pay such operation and maintenance costs may be satisfied by one-time payment in an amount which covers the present worth of the increased annual operation and maintenance costs for a period agreed to by the permittee and the water supply owner. In conjunction with this requirement, the applicant shall provide a plan for determining an appropriate present worth amount and describe how to resolve disputes between the land owner and the applicant over this amount.

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If the affected water supply was not needed for the land use in existence at the time of loss, contamination or diminution, and if the supply is not needed to achieve the postmining land use, replacement requirements may be satisfied by demonstrating that a suitable alternative water source is available and could feasibly be developed. If the latter approach is selected, written concurrence must be obtained from the water supply owner.

"Responsible land management" means that combination of preparation, maintenance, fertilization and tilling of land capable of producing row crops which would be practiced by a person in the business of producing row crops on unmined land in the same region on the same, or similar, soil type as the mined land being managed, which practices can reasonably be expected to continue after mining and reclamation are completed, as determined by the Department.

"Road" means a surface right-of-way for purposes of travel by land vehicles used in surface coal mining and reclamation operations or coal exploration. A road consists of the entire area within the right-of-way, including the roadbed, shoulders, parking and side areas, approaches, structures, ditches, and surface. The term includes access and haulroads constructed, used, reconstructed, improved, or maintained for use in surface coal mining and reclamation operations or coal exploration, including use by coal hauling vehicles to and from transfer, processing or storage areas. The term does not include ramps and routes of travel within the immediate mining area or within spoil or coal mine waste disposal areas.

"Safety factor" means the ratio of the available shear strength to the developed shear stress, or the ratio of the sum of the resisting forces to the sum of the loading or driving forces.

"Secretary" means the Secretary of the Interior or the Secretary's representative.

"Sedimentation pond" means an impoundment used to remove solids from water in order to meet water quality standards or effluent limitations before the water leaves the permit area.

"Shadow area" means any area beyond the limits of the permit area in which underground mine workings are located. This area includes all resources above and below the coal that are protected by the State Act that may be adversely impacted by underground mining operations including impacts of subsidence.

"Significant forest cover" means an area where the plant community consists predominantly of trees and other woody vegetation.

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"Significant, imminent environmental harm to land, air or water resources" means:

An environmental harm is an adverse impact on land, air, or water resources which resources include, but are not limited to, plant and animal life;

An environmental harm is imminent if a condition, practice, or violation exists which:

Is causing such harm; or

May reasonably be expected to cause such harm at any time before the end of the reasonable abatement time that would be set under Section 8.06(c) of the State Act [225 ILCS 720/8.06(c)].

An environmental harm is significant if that harm is appreciable and not immediately repairable.

"Siltation structure" means a device, or devices, used to remove, collect or otherwise control runoff so that resulting outflow will meet applicable effluent standards.

"Slope" means average inclination of a surface measured from the horizontal, generally expressed as the ratio of a unit of vertical distance to a given number of units of horizontal distance (e.g., 1v: 5h). It may also be expressed as a percent or in degrees.

"Soil horizons" means contrasting layers of soil parallel or nearly parallel to the land surface. Soil horizons are differentiated on the basis of field characteristics and laboratory data. The four master soil horizons are:

A horizon. The uppermost mineral layer, often called the surface soil or topsoil. It is the part of the soil in which organic matter is most abundant, and leaching of soluble or suspended particles is typically the greatest.

E horizon. The layer commonly near the surface below an A horizon and above a B horizon. An E horizon is most commonly differentiated from an overlying A horizon by lighter color and generally has measurably less organic matter than the A horizon. An E horizon is most commonly differentiated from the underlying B horizon in the same sequence by color of higher value or lower chroma, by coarser texture, or by a combination of these properties.



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B horizon. The layer that typically is immediately beneath the A and E horizons and often called the subsoil. This middle layer commonly contains more clay, iron, or aluminum than the A, E, or C horizons.

C horizon. The deepest layer of the soil profile. It consists of loose material or weathered rock that is relatively unaffected by biologic activity.

"Soil survey" means a field and other investigation, resulting in a map showing the geographic distribution of different kinds of soils and an accompanying report that describes, classifies, and interprets such soils for use. Soil surveys must meet the standards of the National Cooperative Soil Survey as incorporated by reference in 62 Ill. Adm. Code 1785.17(c)(1).

"Spoil" means overburden that has been removed during surface coal mining operations.

"Stabilize" means to control movement of soil, spoil piles, or areas of disturbed earth by modifying the geometry of the mass, or by otherwise modifying physical or chemical properties, such as by providing a protective surface coating.

"State Act" means the Surface Coal Mining Land Conservation and Reclamation Act [225 ILCS 720].

"State regulatory program" means the Illinois program which the Secretary approved on June 1, 1982 pursuant to 30 CFR 732.1 through 732.15.

"State violation notice" means a violation notice issued by a state regulatory authority or by another agency or instrumentality of State government.

"Steep slope" means any slope of more than 20 degrees or such lesser slope as the Department may designate after consideration of such regional characteristics as soil and climate.

"Substantially disturb" means, for purposes of coal exploration, to impact significantly upon land, air or water resources by blasting; by removal of vegetation, topsoil, or overburden; by construction of roads or other access routes; by placement of excavated earth or waste material on the natural land surface or by other such activities; or to remove more than 250 tons of coal.

"Substantial legal and financial commitments in a surface coal mining operation" means significant investments that have been made on the

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basis of a long-term coal contract in power plants, railroads, coal-handling, preparation, extraction or storage facilities, and other capital-intensive activities. An example would be an existing mine, not actually producing coal, but in a substantial stage of development prior to production. Costs of acquiring the coal in place or of the right to mine it without an existing mine alone, as described in the above example, are not sufficient to constitute substantial legal and financial commitments.

"Successor in interest" means any person who succeeds to rights granted under a permit, by transfer, assignment, or sale of those rights.

"Surface mining activities" means those surface coal mining and reclamation operations incident to the extraction of coal from the earth by removing the materials over the coal seam, before recovering the coal, by auger coal mining, or by recovery of coal from a deposit that is not in its original geologic location.

"Surface coal mining and reclamation operations", or "mining and reclamation operations", means surface coal mining operations and all activities necessary or incidental to the reclamation of such operations. This term includes the term "surface coal mining operations".

"Surface coal mining operations" or "mining operations" means:

Activities conducted on the surface of lands in connection with a surface coal mine or subject to the requirements of Section 516 of the Federal Act, surface operations and surface impacts incident to an underground coal mine, the products of which enter commerce, or the operations of which directly or indirectly affect interstate commerce. Such activities include excavation for the purpose of obtaining coal, including such common methods as contour, strip, auger, mountaintop removal, box cut, open pit, and area mining, the uses of explosives and blasting; in situ dissillation or retorting; leaching or other chemical or physical processing; and the cleaning, concentrating, or other processing or preparation of coal. Such activities also include the loading of coal for interstate commerce at or near the mine-site, provided, these activities do not include the extraction of coal incidental to the extraction of other minerals, where coal does not exceed 16 2/3% of the tonnage of minerals removed for purposes of commercial use or sale, or coal exploration subject to Section 512 of the Federal Act; and provided further, that excavation for the purpose of obtaining coal includes extraction of coal from coal refuse piles; and

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The areas upon which the activities described in the first paragraph of this definition occur or where those activities disturb the natural land surface. These areas shall also include any adjacent land the use of which is incidental to any such activities, all lands affected by the construction of new roads or the improvement or use of existing roads to gain access to the site of those activities and for haulage and excavation, workings, impoundments, dams, ventilation shafts, entryways, refuse banks, dumps, stockpiles, overburden piles, spoil banks, culm banks, tailings, holes or depressions, repair areas, storage areas, processing areas, shipping areas, and other areas upon which are sited structures, facilities, or other property or material on the surface, resulting from or incident to those activities.

"Surface mining operations" means activities conducted on the surface of lands in connection with a surface coal mine or surface operations. Such activities include excavation for the purpose of obtaining coal including such common methods as contour, strip, auger, mountaintop removal, box cut, open pit, and area mining, coal recovery from coal waste disposal areas, the use of explosives and blasting, and in situ distillation or retorting, leaching or other chemical or physical processing, and the cleaning, concentrating, or other processing or preparation, loading of coal at or near the mine site, and the areas on which such activities occur or where such activities disturb the natural land surface. Such areas include any adjacent land the use of which is incidental to any such activities, all lands affected by the construction of new roads or the improvement or use of existing roads to gain access to the site of such activities and for haulage, and excavations, workings, impoundments, dams, refuse banks, dumps, stockpiles, overburden piles, spoil banks, culm banks, tailings, holes or depressions, repair areas, storage areas, processing areas, shipping areas and other areas upon which are sited structures, facilities, or other property or materials on the surface, resulting from or incident to such activities. (Section 1.03(a)(24) of the Surface Coal Mining Land Conservation and Reclamation Act [225 ILCS 720/1.03(a)(24)]<sub>1</sub>.)†

"Suspended solids or nonfilterable residue, expressed as milligrams per liter", means any materials carried or held in suspension in water which are retained by a standard glass fiber filter in the procedure outlined by the Environmental Protection Agency's regulations for waste water and analyses (40 CFR 136).

"Temporary diversion" means a diversion of a stream or overland flow which is used during coal exploration or surface coal mining and reclamation operations and which the Department has not approved to remain after reclamation.

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"Temporary impoundment" means an impoundment which is used during coal exploration or surface coal mining and reclamation operations and which the Department has not approved to remain after reclamation.

"Ton" means 2000 pounds avoirdupois (.90718 metric ton).

"Topsoil" means the A and E soil horizon layers of the four master soil horizons.

"Toxic-forming materials" means earth materials or wastes which, if acted upon by air, water, weathering, or microbiological processes, are likely to produce chemical or physical conditions in soils or water that are detrimental to living organisms or uses of water.

"Toxic mine drainage" means water that is discharged from active or abandoned mines or other areas affected by coal exploration or surface coal mining and reclamation operations, which contains a substance that through chemical action or physical effects is likely to kill or injure, or impair living organisms commonly present in the area that might be exposed to it.

"Transfer, assignment or sale of permit rights" means a change in ownership or other effective control over the right to conduct surface coal mining operations under a permit which the Department issued.

"Underground development waste" means waste rock mixtures resulting from development of areas for underground mining activities.

"Underground mining activities" means a combination of:

Surface operations incident to underground extraction of coal or in situ processing, such as construction, use, maintenance, and reclamation of roads, above-ground repair areas, storage areas, processing areas, shipping areas, areas upon which are sited support facilities including hoist and ventilating ducts, areas utilized for the disposal and storage of waste, and areas on which materials incident to underground mining operations are placed; and

Underground operations such as underground construction, operation, and reclamation of shafts, edits, underground support facilities, in situ processing, and underground mining, hauling, storage, and blasting.

"Underground mining operations" means:

the underground excavation of coal; and

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surface operations incident to the underground extraction of coal, such as construction, use, maintenance, and reclamation of roads, above-ground repair areas, storage areas, processing areas, shipping areas, areas on which are sited support facilities including hoist and ventilation ducts, areas used for the storage and disposal of waste, and areas on which materials incident to underground mining operations are placed; and

underground operations incident to underground excavation of coal, such as underground construction, operation, and reclamation of shafts, edits, underground support facilities, in situ processing, and underground mining, hauling, storage, or blasting. (Section 1.03(a)(26) of the Surface Coal Mining Land Conservation and Reclamation Act [225 ILCS 720/1.03(a)(26)]<sub>1,7</sub>

"Unwarranted failure to comply" means the failure of a permittee to prevent the occurrence of any violation of the operator's permit or any requirement of the State Act due to indifference, lack of diligence, or lack of reasonable care, or the failure to abate any violation of such permit of the State due to indifference, lack of diligence, or lack of reasonable care. (Section 1.03(a)(27) of the Surface Coal Mining Land Conservation and Reclamation Act [225 ILCS 720/1.03(a)(27)]<sub>1,7</sub>

"Valid existing rights" means:

Except for haul roads, that a person possesses valid existing rights for an area protected under Section 7.01 of the State Act [225 ILCS 720/7.01] on August 3, 1977, if the application of any of the prohibitions contained in that Section to the property interest that existed on that date would effect a taking of the person's property which would entitle the person to just compensation under the Fifth and Fourteenth Amendments to the United States Constitution or Article I, Section 15 of the Illinois Constitution of 1970 or both.

For haul roads:

A recorded right of way, recorded easement or a permit for a coal haul road recorded as of August 3, 1977, or at the time of the designation of an area, as to which a conflict is alleged, as part of a national system listed in Section 7.01 of the State Act, or at the time of the coming into existence, within the prohibited distance of a structure, road, cemetery, or other activity listed in Section 7.01 of the State Act; or

Any other road in existence as of August 3, 1977, or at the

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time of the designation of an area as to which a conflict is alleged, as part of a national system listed in Section 7.01 of the State Act, or at the time of coming into existence, within the prohibited distance of a structure, road, cemetery or other activity listed in Section 7.01 of the State Act.

Where an area comes under the protection of Section 7.01 of the State Act after August 3, 1977, valid existing right shall be found if:

On the date the protection comes into existence, a validly authorized surface coal mine operation exists on that area; or

The prohibition caused by Section 7.01 of the State Act, if applied to the property interest that exists on the date the protection comes into existence, would effect a taking of the person's property which would entitle the person to just compensation under the Fifth and Fourteenth Amendments to the United States Constitution or Article I, Section 15 of Illinois Constitution of 1970, or both.

Interpretation of the terms of the document relied upon to establish valid existing rights shall be based either upon Illinois case law concerning interpretation of documents conveying mineral rights or, where Illinois case law is lacking, upon the usage and custom at the time and place where it came into existence and upon a showing by the applicant that the parties to the document actually contemplated a right to conduct the same underground or surface mining activities for which the applicant claims a valid existing right.

"Valley fill" means a fill structure consisting of any material, other than organic material, that is placed in a valley where side slopes of the existing valley, measured at the steepest point, are greater than 20 degrees, or where the average slope of the profile of the valley from the toe of the fill to the top of the fill is greater than ten degrees.

"Violation notice" means any written notification, from a governmental entity, whether by letter, memorandum, judicial or administrative pleading, or other written communication, of a violation of the Act; any federal regulation promulgated pursuant thereto; a State program; or any federal or state law or regulation pertaining to air or water environmental protection in connection with a surface coal mining operation. It includes, but is not limited to, a notice of violation; an imminent harm cessation order; a failure-to-abate cessation order;



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a final order, bill or demand letter pertaining to a delinquent civil penalty; a bill or demand letter pertaining to delinquent abandoned mine reclamation fees; and a notice of bond forfeiture, where one or more violations upon which the forfeiture was based have not been corrected.

"Water table" means the upper surface of a zone of saturation, where the body of ground water is not confined by an overlying impermeable zone.

"Wetland" means land that has a predominance of hydric soils (soils which are usually wet and where there is little or no free oxygen) and that is inundated or saturated by surface or groundwater at a frequency and duration sufficient to support, and that under normal circumstances does support, a prevalence of hydrophytic vegetation (plants typically found in wet habitats) typically adapted for life in saturated soil conditions. Areas which are restored or created as the result of mitigation or planned construction projects and which function as a wetland are included within this definition even when all three wetland parameters are not present.

"Willful violation" means a deliberate act or omission which violates the State Act, these regulations, or any permit condition which the State Act requires.

(Source: Amended at 23 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

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- 1) Heading of the Part: Permanent Program Performance Standards--Underground Mining Operations
- 2) Code Citation: 62 Ill. Adm. Code 1817
- 3) Section Number:  
1817.41 Proposed Action:  
1817.121 Amend  
1817.121 Amend
- 4) Statutory Authority: Implemented and authorized by the Surface Coal Mining Land Conservation and Reclamation Act [225 ILCS 720].
- 5) A Complete Description of the Subjects and Issues Involved: The Energy Policy Act of 1992 amended the Surface Mining Control and Reclamation Act, which is the federal law after which Illinois' surface mining and reclamation program is modeled. Subsequent to these amendments, the federal Office of Surface Mining notified the Department that its rules were no longer as effective as counterpart federal rules, given the Energy Policy Act of 1992 amendments. The purpose of this amendment is to bring Illinois' program in line with and make it as effective as all counterpart federal law and regulations.

The proposed amendments establish permitting requirements for the underground extraction areas of underground mines and require underground mine operators to monitor landowner water supplies and the condition of buildings prior to subsidence. Any water loss or building damage resulting from subsidence must be repaired or replaced.

- 6) Will this proposed rule replace an emergency rule currently in effect? No
- 7) Does this rulemaking contain an automatic repeal date? No
- 8) Does this proposed amendments contain incorporations by reference? No
- 9) Are there any other amendments pending on this Part? No
- 10) Statement of Statewide Policy Objectives: The proposed amendments will have no impact upon local units of government
- 11) Time, Place, and Manner in which interested persons may comment on this proposed rulemaking: Written comments may be submitted within 45 days after the publication of this notice to:

Karen E. Jacobs, Legal Counsel  
Illinois Department of Natural Resources  
524 South Second Street  
Springfield IL 62701  
(217) 782-1809

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## 12) Initial Regulatory Flexibility Analysis:

A) Types of small businesses, small municipalities and not for profit corporations affected: None

B) Reporting, bookkeeping or other procedures required for compliance: None

C) Types of professional skills necessary for compliance: None

13) Regulatory Agenda on which this rulemaking was summarized: This rulemaking was not included on either of the 2 most recent regulatory agendas because: The Department neglected to file a regulatory agenda on this Part.

The full text of the Proposed Amendments begins on the next page:

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## TITLE 62: MINING

## CHAPTER 1: DEPARTMENT OF NATURAL RESOURCES

## PART 1817

PERMANENT PROGRAM PERFORMANCE STANDARDS--  
UNDERGROUND MINING OPERATIONS

Section	Signs and Markers
1817.11	Casing and Sealing of Exposed Underground Openings: General Requirements
1817.13	Casing and Sealing of Underground Openings: Temporary
1817.14	Casing and Sealing of Underground Openings: Permanent
1817.15	Topsoil: General Requirements (Repealed)
1817.21	Topsoil and Subsoil
1817.22	Topsoil: Storage (Repealed)
1817.23	Topsoil: Redistribution (Repealed)
1817.24	Topsoil: Nutrients and Soil Amendments (Repealed)
1817.25	Topsoil: Nutrients and Soil Amendments (Repealed)
1817.41	Hydrologic Balance Protection
1817.42	Hydrologic Balance: Water Quality Standards and Effluent Limitations
1817.43	Diversions
1817.44	Hydrologic Balance: Stream Channel Diversions (Repealed)
1817.45	Hydrologic Balance: Sediment Control Measures
1817.46	Hydrologic Balance: Siltation Structures
1817.47	Hydrologic Balance: Discharge Structures
1817.48	Hydrologic Balance: Acid - Forming and Toxic - Forming Materials (Repealed)
1817.49	Impoundments
1817.50	Hydrologic Balance: Underground Mine Entry and Access Discharges (Repealed)
1817.52	Hydrologic Balance: Surface and Ground Water Monitoring (Repealed)
1817.53	Hydrologic Balance: Transfer of Wells (Repealed)
1817.55	Hydrologic Balance: Discharge of Water Into an Underground Mine (Repealed)
1817.56	Post - Mining Rehabilitation of Sedimentation Ponds, Diversions, Impoundments and Treatment Facilities
1817.57	Hydrologic Balance: Stream Buffer Zones
1817.59	Coal Recovery
1817.61	General Requirements
1817.62	Use of Explosives: Pre - Blasting Survey
1817.64	Use of Explosives: General Performance Standards (Repealed)
1817.65	Use of Explosives: Surface Blasting Requirements (Repealed)
1817.66	Use of Explosives: Blasting Signs, Warnings, and Access Control
1817.67	Use of Explosives: Control of Adverse Effects
1817.68	Use of Explosives: Records of Blasting Operations
1817.71	Disposal of Excess Spoil: General Requirements
1817.72	Disposal of Excess Spoil: Valley Fills/Head-of-Hollow Fills

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- 1817.73 Disposal of Underground Development Waste and Excess Spoil:  
Head-of-Hollow Fills (Repealed)
- 1817.74 Disposal of Excess Spoil: Durable Rock Fills
- 1817.75 Disposal of Excess Spoil: Preexisting Benches
- 1817.81 Coal Mine Waste: General Requirements
- 1817.82 Coal Processing Waste Banks: Site Inspection (Repealed)
- 1817.83 Coal Mine Waste: Refuse Piles
- 1817.84 Coal Mine Waste: Impounding Structures
- 1817.85 Coal Processing Waste Banks: Construction Requirements (Repealed)
- 1817.86 Coal Processing Waste: Burning (Repealed)
- 1817.87 Coal Mine Waste: Burning and Burned Waste Utilization
- 1817.88 Coal Processing Waste: Return to Underground Workings (Repealed)
- 1817.89 Disposal of Noncoal Mine Wastes
- 1817.91 Coal Processing Waste: Dams and Embankments: General Requirements (Repealed)
- 1817.92 Coal Processing Waste: Dams and Embankments: Site Preparation (Repealed)
- 1817.93 Coal Processing Waste: Dams and Embankments: Design and Construction (Repealed)
- 1817.94 Coal Processing Waste: Time Requirement for Completion of Covering (Repealed)
- 1817.95 Stabilization of Surface Areas
- 1817.97 Protection of Fish, Wildlife and Related Environmental Values
- 1817.99 Slides and Other Damage
- 1817.100 Contemporaneous Reclamation and Subsidence Control
- 1817.101 Backfilling and Grading: General Requirements
- 1817.102 Backfilling and Grading: General Grading Requirements
- 1817.103 Backfilling and Grading: Covering Coal and Acid- and Toxic-forming Materials (Repealed)
- 1817.106 Backfilling and Grading: Previously Mined Areas
- 1817.107 Backfilling and Grading: Steep Slopes
- 1817.111 Revegetation: General Requirements
- 1817.112 Revegetation: Use of Introduced Species (Repealed)
- 1817.113 Revegetation: Timing
- 1817.114 Revegetation: Mulching and Other Soil Stabilization Practices
- 1817.115 Revegetation: Grazing (Repealed)
- 1817.116 Revegetation: Standards for Success
- 1817.117 Revegetation: Tree and Shrub Vegetation
- 1817.121 Subsidence Control
- 1817.122 Subsidence Control: Public Notice
- 1817.124 Subsidence Control: Surface Owner Protections (Repealed)
- 1817.126 Subsidence Control: Buffer Zones (Repealed)
- 1817.131 Cessation of Operations: Temporary
- 1817.132 Cessation of Operations: Permanent
- 1817.133 Post-Mining Land Capability
- 1817.150 Roads: General
- 1817.151 Primary Roads
- 1817.180 Utility Installations

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- 1817.181 Support Facilities
- 1817.182 Minor Underground Mine Facilities Not at or Adjacent to the Processing or Preparation Facility or Area
- 1817.190 Affected Acreage Map

**AUTHORITY:** Implementing and authorized by the Surface Coal Mining Land Conservation and Reclamation Act [225 ILCS 720].

**SOURCE:** Adopted at 4 Ill. Reg. 37, p. 1, effective June 1, 1982; amended at 6 Ill. Reg. 1, effective June 1, 1982; amended at 6 Ill. Reg. 15024, effective December 30, 1982; codified at 8 Ill. Reg. 8230; amended at 9 Ill. Reg. 13315, effective October 10, 1985; amended at 10 Ill. Reg. 9606, effective July 1, 1986; amended at 11 Ill. Reg. 8250, effective July 1, 1987; amended at 14 Ill. Reg. 11855, effective January 1, 1991; amended at 15 Ill. Reg. 17239, effective January 1, 1992; amended at 17 Ill. Reg. 11031, effective July 1, 1993; amended at 20 Ill. Reg. 1993, effective January 19, 1996; amended at 22 Ill. Reg. 20197, effective November 5, 1998; amended at 23 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_.

## Section 1817.41 Hydrologic Balance Protection

## a) General.

All Underground mining and reclamation activities shall be conducted to minimize disturbance of the hydrologic balance within the permit and adjacent areas, to prevent material damage to the hydrologic balance outside the permit area such as diminution of recharge capacity, and to support approved post-mining land uses in accordance with the terms and conditions of the approved permit and the performance standards of this Part. The Department shall require additional preventative, remedial, or monitoring measures to assure that material damage to the hydrologic balance outside the permit area is prevented if the current approved plan is not sufficient to assure this protection. Mining and reclamation practices that minimize water pollution and changes in flow shall be used in preference to water treatment.

b) Ground water protection. In order to protect the hydrologic balance, underground mining activities shall be conducted according to the plan approved under 62 Ill. Adm. Code 1784.14(g). Ground water quality shall be protected by handling earth materials and runoff in a manner that minimizes acidic, toxic, or other harmful infiltration to ground water systems and by managing excavations and other disturbances to prevent or control the discharge of pollutants into the ground water.

c) Ground water monitoring.

1) Ground water monitoring shall be conducted according to the ground water monitoring plan approved under 62 Ill. Adm. Code 1784.14(h). If unanticipated conditions develop, or if an approved operation or reclamation plan is modified or revised, such that the current monitoring program would not detect



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possible adverse impacts to the hydrologic balance, then the Department shall require additional monitoring including, but not limited to, increased monitoring frequency, additional monitoring wells, or change in the number of parameters being monitored, when it is determined that the proposed, or approved, monitoring plan is not adequate to detect adverse impacts to the hydrologic balance.

- 2) Ground water monitoring data shall be submitted every three (3) months to the Department or more frequently if necessary to detect possible adverse impacts to the hydrologic balance as prescribed by the Department. Ground water monitoring reports shall be submitted by the first day of the second month following the reporting period, unless the Department specifies an alternative reporting schedule. Monitoring reports shall include analytical results from each sample taken during the reporting period. When the analysis of any ground water sample indicates noncompliance with the permit conditions, then the operator shall promptly notify the Department and immediately take the actions provided for in 62 Ill. Adm. Code 1773.17(e) and 1784.14(g).
- 3) Ground water monitoring shall proceed through mining and continue during reclamation until bond release. Consistent with the procedures of 62 Ill. Adm. Code 1774.13, the Department may modify the monitoring requirements when such changes do not diminish the ability to detect adverse impacts to the hydrologic balance, including the parameters covered and the sampling frequencies, if the operator demonstrates, using the monitoring data obtained under this subsection that:
  - A) The operation has minimized disturbance to the prevailing hydrologic balance in the permit and adjacent areas and prevented material damage to the hydrologic balance outside the permit area; water quality and quantity are suitable to support approved post-mining land uses; or
  - B) Monitoring is no longer necessary to achieve the purposes set forth in the monitoring plan approved under 62 Ill. Adm. Code 1784.14(h).

- 4) Equipment, structures, and other devices used in conjunction with monitoring the quality and quantity of ground water onsite and offsite shall be properly installed, maintained, and operated and shall be removed by the operator when no longer needed, except as provided for under subsection (g).
- d) Surface water protection. In order to protect the hydrologic balance, underground mining activities shall be conducted according to the plan approved under 62 Ill. Adm. Code 1784.14(g) and the following:
  - 1) Surface water quality shall be protected by handling earth materials, groundwater discharges, and runoff in a manner that minimizes the formation of acidic or toxic drainages; prevents, to the extent possible using the best technology currently available, additional contributions of suspended solids to

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streamflow outside the permit area; and otherwise prevents water pollution. If drainage control, revegetation and revegetation of disturbed areas, diversion of runoff, mulching, or other reclamation and remedial practices are not adequate to meet the requirements of this Section and Section 1817.42, the operator shall use and maintain the necessary water treatment facilities or water quality controls.

- 2) Surface water quantity and flow rates shall be protected by handling earth materials and runoff in accordance with the steps outlined in the plan approved under 62 Ill. Adm. Code 1784.14(g).
- e) Surface water monitoring.

- 1) Surface water monitoring shall be conducted according to the surface water monitoring plan approved under 62 Ill. Adm. Code 1784.14(i). If unanticipated conditions develop, or if an approved operation or reclamation plan is modified or revised, such that the current monitoring program would not detect possible adverse impacts to the hydrologic balance, then the Department shall require additional monitoring including, but not limited to, changes in the number of parameters or frequency of sample collection when it is determined that the approved plan is not designed to detect adverse impacts to the hydrologic balance.

- 2) Surface water monitoring data shall be submitted to the Department every three (3) months, or more frequently if necessary to detect possible adverse impacts to the hydrologic balance as prescribed by the Department. This shall include, but not necessarily be limited to, copies of reports submitted for the National Pollutant Discharge Elimination System (NPDES) sent to the Illinois Environmental Protection Agency (EPA). Copies of NPDES reports shall be sent to the Department by the first day of the second month following the reporting period. Monitoring reports shall include analytical results from each sample taken during the reporting period. When the analytical results of any surface water sample indicates noncompliance with the permit conditions, the operator shall notify the Department within five (5) days and immediately take the actions provided for in 62 Ill. Adm. Code 1773.17(e) and 1784.14(g). The reporting requirements of this subsection do not exempt the operator from meeting any NPDES reporting requirements.

- 3) Surface water monitoring shall proceed through mining and continue until bond release. Consistent with 62 Ill. Adm. Code 1774.13, the Department may modify the monitoring requirements, except those required by the Illinois EPA, when such changes to the approved plan do not diminish the ability to detect adverse impacts to the hydrologic balance, including the parameters covered and sampling frequency if the operator demonstrates using the monitoring data that:
  - A) The operation has minimized disturbance to the hydrologic balance in the permit and adjacent areas and prevented

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material damage to the hydrologic balance outside the permit area; water quantity and quality are suitable to support approved post-mining land uses; and

B) Monitoring is no longer necessary to achieve the purposes set forth in the monitoring plan approved under 62 Ill. Adm. Code 1784.14(i).

- 4) Equipment, structures, and other devices used in conjunction with monitoring the quality and quantity of surface water onsite and offsite shall be properly installed, maintained, and operated and shall be removed by the operator when no longer needed, except as provided for in Section 1817.49(b).

## f) Acid- and toxic-forming materials.

- 1) Drainage from acid- and toxic-forming materials and underground development waste into surface water and ground water shall be avoided by:

- A) Identifying and burying and/or treating, when necessary, materials which may adversely affect water quality, or be detrimental to vegetation or to public health and safety if not buried and/or treated; and
- B) Storing materials in a manner that will protect surface water and ground water by preventing erosion, the formation of polluted runoff, and the infiltration of polluted water. Storage shall be limited to the period until burial and/or treatment first become feasible, and so long as storage will not result in any risk of water pollution or other environmental damage.

- 2) Storage, burial or treatment practices shall be consistent with other material handling and disposal provisions of Section 1817.102.

- g) Before final release of bond, exploratory or monitoring wells shall be sealed in a safe and environmentally sound manner in accordance with Sections 1817.13 and 1817.15. With prior approval of the Department, wells may be transferred to another party for further use. At a minimum, the conditions of such transfer shall comply with State and local law and the permittee shall remain responsible for the proper management of the well until bond release in accordance with Sections 1817.13 and 1817.15.

- h) Discharge of water into an underground mine.

- 1) Discharges into an underground mine are prohibited, unless specifically approved by the Department after a demonstration that the discharge will:

- A) Minimize disturbance to the hydrologic balance on the permit area, prevent material damage outside the permit area and otherwise eliminate public hazards resulting from underground mining activities;
- B) Not result in a violation of water quality standards or effluent limitations set forth in Section 1817.42;
- C) Be at a known rate and quality which shall meet the effluent

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limitations of 62 Ill. Adm. Code 1817.42 for pH and total suspended solids, except that the Department may allow pH and total suspended solids to exceed effluent limits so long as they will not result in any adverse impacts to the hydrologic balance; and

D) Meet with the approval of the Mine Safety and Health Administration.

- 2) Discharges shall be limited to the following:

- A) Water;
- B) Coal processing waste;
- C) Fly ash from a coal-fired facility;
- D) Sludge from an acid-mine drainage treatment facility;
- E) Flue-gas desulfurization sludge;
- F) Inert materials used for stabilizing underground mines; and
- G) Underground mine development wastes.

- 3) Water from one underground mine may be diverted into other underground workings according to the requirements of this Section.

- i) Gravity discharges from underground mines.

- 1) Surface entries and accesses to underground workings shall be located and managed to prevent or control gravity discharge of water from the mine. Gravity discharges of water from an underground mine, other than a drift mine subject to subsection (i)(2), shall be allowed by the Department if it is demonstrated that the untreated or treated discharge complies with the performance standards of this Part and any additional NPDES permit requirements.

- 2) Notwithstanding anything to the contrary in subsection (i)(1), the surface entries and accesses of drift mines located in acid-producing or iron-producing coal seams shall be located in such a manner as to prevent any gravity discharge from the mine.

- 1) Drinking, domestic or residential water supply. The operator must promptly replace any drinking, domestic or residential water supply that is contaminated, diminished or interrupted by underground mining activities conducted after January 19, 1996, if the affected well or spring was in existence before the date the Department received the permit application for the activities causing the loss, contamination or interruption. The baseline hydrologic information required in 62 Ill. Adm. Code 1780.21 and 1784.14 and the geologic information concerning baseline hydrologic conditions required in 62 Ill. Adm. Code 1781.21 and 1784.22 will be used to determine the impact of mining activities upon the water supply.

(Source: Amended at 23 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

## Section 1817.121 Subsidence Control



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## a) Measures to prevent or minimize damage.

1) The operator shall either adopt measures consistent with known technology which prevent subsidence from causing material damage to the extent technologically and economically feasible, maximize mine stability, and maintain the value and reasonably foreseeable use of surface lands; or adopt mining technology which provides for planned subsidence in a predictable and controlled manner. Nothing in this Part shall be construed to prohibit the standard method of room-and-pillar mining.

2) If an operator employs mining technology that provides for planned subsidence in a predictable and controlled manner, the operator must take necessary and prudent measures, consistent with the mining method employed, to minimize material damage, to the extent technologically and economically feasible, to structures and facilities except that measures required to minimize material damage to such structures are not required if:

A) The operator has the written consent of the owners; or  
 B) Unless the anticipated damage would constitute a threat to health or safety, the costs of such measures exceed the anticipated costs of repair.

Written consent or cost analysis must be provided to the Department 60 days prior to performing planned subsidence operations under a given structure or prior to planned subsidence extraction occurring within 1000 feet of a protected structure. A lesser time period or distance may be employed if approved in writing by the Department.

3) Nothing in this Part prohibits the standard method of room-and-pillar mining.

b) The operator shall comply with all provisions of the subsidence control plan prepared pursuant to the requirements of 62 Ill. Adm. Code 1784.20, and as approved by the Department.

c) Repair of damage. The operator shall:

1) Repair of damage to surface lands. The operator must correct ~~every~~ any material damage resulting from subsidence caused to surface lands, to the extent technologically and economically feasible, by restoring the land to a condition capable of maintaining the value and reasonably foreseeable uses which it was capable of supporting before subsidence.

2) Repair or compensation for damage to structures and facilities. The operator must promptly repair or compensate the owner for material damage resulting from subsidence caused to any structure or facility that existed at the time of the coal extraction under or adjacent to the materially damaged structure. If repair or replacement is selected, the operator must fully rehabilitate, restore or replace the damaged structure. If compensation is selected, the operator must compensate the owner of the damaged structure for the full amount of the decrease in value resulting from the subsidence-related damage. The operator may provide compensation

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by the purchase, before mining, of a non-cancelable premium-prepaid insurance policy. The requirements of this subsection (c)(2) apply only to subsidence-related damage caused by underground coal extraction conducted after February 1, 1983. ~~Correct material damage resulting from subsidence caused to any structures or facilities by repairing the damage or compensating the owner of such structures or facilities in the full amount of the diminution in value resulting from the subsidence. Repair of damage includes rehabilitation, restoration, or replacement of damaged structures or facilities. Compensation may be accomplished by the purchase prior to mining of a noncancelable premium-prepaid insurance policy payable to the surface owner in the full amount of the possible material damage. Nothing in subsection (c)(2) shall be deemed to grant or authorize an exercise of the power of condemnation or the right of eminent domain by any person engaged in underground mining activities, and~~

3) Rebuttable presumption of causation by subsidence. Promptly ~~replace any drinking domestic or residential water supply from a well or spring in existence prior to the application for a surface coal mining and reclamation operations permit which has been affected by contamination, diminution, or interruption resulting from underground coal mining operations.~~

A) Rebuttable presumption of causation for damage within an angle of draw. If damage to any structure or facility occurs as a result of earth movement within an area determined by projecting a specified angle of draw from the outermost boundary of any underground mine workings to the surface of the land, a rebuttable presumption exists that the operator caused the damage. The presumption will apply to a 30-degree angle of draw.

B) Approval of site-specific angle of draw. An operator may request that the presumption apply to an angle of draw different from that established in the regulatory program. The Department may approve application of the presumption to a site-specific angle of draw different than that contained in the State or Federal program based on a site-specific analysis submitted by an applicant. To establish a site-specific angle of draw, an operator must demonstrate and the Department must determine in writing that the proposed angle of draw has a more reasonable basis than the standard set forth in the State or Federal program, based on a site-specific geotechnical analysis of the potential surface impacts of the mining operation.

C) No presumption where access for pre-subsidence survey is denied. If the operator was denied access to the land or property for the purpose of conducting the pre-subsidence survey in accordance with 62 Ill. Adm. Code 1784.20(a), no



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rebuttable presumption will exist.

D) Rebuttal of presumption. The presumption will be rebutted if, for example, the evidence establishes that: the damage predated the mining in question; the damage was proximately caused by some other factor or factors and was not proximately caused by subsidence; or the damage occurred outside the surface area within which subsidence was actually caused by the mining in question.

E) Information to be considered in determination of causation. In any determination whether damage to protected structures was caused by subsidence from underground mining, all relevant and reasonably available information will be considered by the Department.

4) Adjustment of bond amount for subsidence damage. When subsidence-related material damage to land, structures or facilities protected under subsection (c)(1) or (c)(2) of this Section occurs, or when contamination, diminution, or interruption to a water supply protected under Section 1817.41(l) of this Part occurs, the Department must require the operator to obtain additional performance bond in the amount of the estimated cost of repairs if the operator will be repairing, or in the amount of the decrease in value if the operator will be compensating the owner, or in the amount of estimated cost to replace the protected water supply if the operator will be replacing the water supply, until the repair, compensation or replacement is completed. If repair, compensation or replacement is completed within 90 days after the occurrence of damage, no additional bond is required. The Department may extend the 90-day time frame, but not to exceed one year, if the operator demonstrates and the Department finds in writing that subsidence is not complete, that not all probable subsidence-related material damage has occurred to lands or protected structures, or that not all reasonably anticipated changes have occurred affecting the protected water supply, and that therefore it would be unreasonable to complete within 90 days the repair of the subsidence-related material damage to lands or protected structures, or replacement of the protected water supply. The operator may also utilize appropriate terms and conditions for liability insurance required under 62 Ill. Adm. Code 1800.60 to assure that the financial responsibility to comply with subsection (c) of this Section is in place.

d) Underground mining activities shall not be conducted beneath or adjacent to public buildings and facilities; churches, schools, and hospitals; impoundments with a storage capacity of 20 acre-feet or more or bodies of water with a volume of 20 acre-feet or more, unless the subsidence control plan demonstrates that subsidence will not cause material damage to, or reduce the reasonably foreseeable use of such features or facilities. If the Department determines that it is

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necessary in order to minimize the potential for material damage to the features or facilities described above or to any aquifer or body of water that serves as a significant water source for any public water supply system, it may limit the percentage of coal extracted under or adjacent thereto.

e) If subsidence causes material damage to any of the features or facilities covered by subsection (d), the Department may suspend mining under or adjacent to such features or facilities until the subsidence control plan is modified to ensure prevention of further material damage to such features of facilities.

f) The Department shall suspend underground mining activities under urbanized areas, cities, towns, and communities, and adjacent to industrial or commercial buildings, major impoundments, or perennial streams, if imminent danger is found to inhabitants of the urbanized areas, cities, towns, or communities.

g) All underground operators shall on or before April 1, of each year submit three (3) mine maps of underground workings to the Department. The mine maps shall indicate the actual extent of mining for the calendar year prior to the submittal date. Mine maps and descriptions shall include the size, configuration, and approximate location of pillars and entries, extraction ratios, measures taken to prevent or minimize subsidence and related damage and areas of full extraction. The mine maps shall also project the anticipated extent of mining for at least the calendar year at the time of the submittal. Mine maps shall also include, at a minimum, all features identified in subsection (d) of this Section, public roads and all Township and Range designations and section corners. The map shall be sealed by an engineer registered in the State of Illinois. The maps shall be planned as a continuous map so that areas mined each year may be added and indicated by the dates mining occurred. Maps shall include the name of mine and the operator; address of the operator; scale, including both written and bar scales; and by whom the map was drawn. Maps submitted shall be at a scale approved by the Department as necessary to provide sufficient detail for the information required by this subsection. Upon request of the operator, information may be held confidential, in accordance with the requirements of 62 Ill. Adm. Code 1773.13(d).

(Source: Amended at 23 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

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1) Heading of the Part: Underground Mining Permit Applications--Minimum Requirements for Reclamation and Operation Plan

2) Code Citation: 62 Ill. Adm. Code 1784

3) Section Number: Proposed Action:  
1784.14 Amend  
1784.20 Amend

4) Statutory Authority: Implemented and authorized by the Surface Coal Mining Land Conservation and Reclamation Act [225 ILCS 720].

5) A Complete Description of the Subjects and Issues Involved: The Energy Policy Act of 1992 amended the Surface Mining Control and Reclamation Act, which is the federal law after which Illinois' surface mining and reclamation program is modeled. Subsequent to these amendments, the federal Office of Surface Mining notified the Department that its rules were no longer as effective as counterpart federal rules, given the Energy Policy Act of 1992 amendments. The purpose of this amendment is to bring Illinois' program in line with and make it as effective as all counterpart federal law and regulations.

The proposed amendments establish permitting requirements for the underground extraction areas of underground mines and require underground mine operators to monitor landowner water supplies and the condition of buildings prior to subsidence. Any water loss or building damage resulting from subsidence must be repaired or replaced.

6) Will this proposed rule replace an emergency rule currently in effect? No

7) Does this rulemaking contain an automatic repeal date? No

8) Does this proposed amendments contain incorporations by reference? No

9) Are there any other amendments pending on this Part? No

10) Statement of Statewide Policy Objectives: The proposed amendments will have no impact upon units of local government

11) Time, Place, and Manner in which interested persons may comment on this proposed rulemaking: Written comments may be submitted within 45 days after the publication of this notice to:

Karen E. Jacobs, Legal Counsel  
Illinois Department of Natural Resources  
524 South Second Street  
Springfield IL 62701  
Telephone: 217/782-1809

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12) Initial Regulatory Flexibility Analysis:

A) Types of small businesses, small municipalities and not for profit corporations affected: None

B) Reporting, bookkeeping or other procedures required for compliance: None

C) Types of professional skills necessary for compliance: None

13) Regulatory Agenda on which this rulemaking was summarized: This rulemaking was not included on either of the 2 most recent regulatory agendas because: The Department neglected to file a regulatory agenda on this Part.

The full text of the Proposed Amendments begins on the next page.

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## TITLE 62: MINING

## CHAPTER I: DEPARTMENT OF NATURAL RESOURCES

## PART 1784

## UNDERGROUND MINING PERMIT APPLICATIONS--MINIMUM REQUIREMENTS FOR RECLAMATION AND OPERATION PLAN

Section	
1784.4	Responsibilities
1784.5	Use of Existing Data
1784.6	Use of Expert Opinion
1784.11	Operation Plan: General Requirements
1784.12	Operation Plan: Existing Structures
1784.13	Reclamation Plan: General Requirements
1784.14	Hydrologic Information
1784.15	Reclamation Plan: Pre-Mining and Post-Mining Information
1784.16	Reclamation Plan: Ponds, Impoundments, Banks, Dams, and Embankments
1784.17	Protection of Public Parks and Historic Places
1784.18	Relocation or Use of Public Roads
1784.19	Underground Development Waste
1784.20	Subsidence Control Plan
1784.21	Fish and Wildlife Plan
1784.22	Geologic Information
1784.23	Operation Plan: Maps and Plans
1784.24	Transportation Facilities
1784.25	Return of Coal Processing Waste to Abandoned Underground Workings
1784.26	Air Pollution Control Plan
1784.27	Rehabilitation of Siltation Structures, Diversions, Impoundments, and Treatment Facilities (Repealed)
1784.29	Diversions
1784.30	Support Facilities

AUTHORITY: Implementing and authorized by the Surface Coal Mining Land Conservation and Reclamation Act [225 ILCS 720].

SOURCE: Adopted at 4 Ill. Reg. 37, P. 1, effective June 1, 1982; amended at 6 Ill. Reg. 1, effective June 1, 1982; codified at 8 Ill. Reg. 9350; amended at 11 Ill. Reg. 8652, effective July 1, 1987; amended at 14 Ill. Reg. 11935, effective January 1, 1991; amended at 15 Ill. Reg. 17301, effective January 1, 1992; amended at 17 Ill. Reg. 11135, effective July 1, 1993; amended at 20 Ill. Reg. 2166, effective January 19, 1996; recodified from the Department of Mines and Minerals to the Department of Natural Resources at 22 Ill. Reg. 7712; amended at 23 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_.

## Section 1784.14 Hydrologic Information

- a) All water quality analyses performed to meet the requirements of this Section shall be conducted according to the methodology in the 15th

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edition of "Standard Methods for the Examination of Water and Wastewater" (1980), which is incorporated by reference, or the methodology in 40 CFR 136 and 434. Water quality sampling performed to meet the requirements of this Section shall be conducted according to either methodology listed above when feasible. "Standard Methods for the Examination of Water and Wastewater" (1980) is a joint publication of the American Public Health Association, the American Water Works Association and the Water Pollution Control Federation and is available from the American Public Health Association, 1015 15th Street, NW, Washington, D.C. 20036. This document is also available for inspection at the Land Reclamation Division, Office Department of Mines and Minerals, 300 West Jefferson Street, Suite 300, P.O. Box 10197, Springfield, Illinois 62791-0197.

b) The application shall contain the following baseline hydrologic information. When this information is insufficient for the Department to determine if adverse impacts may result to the hydrologic balance, additional information shall be required, such as but not limited to water supply contamination or diminution.

- 1) Ground water information.  
The location and ownership for the permit and adjacent area of existing wells, springs, and other ground water resources, seasonal quality and quantity of ground water, and usage.

A) Ground water quality descriptions shall include, at a minimum, pH, total dissolved solids, hardness, alkalinity, acidity, sulfates, total iron, total manganese and chlorides. The Department shall allow the measurement of specific conductance in lieu of total dissolved solids if the permittee develops site-specific relationships precisely correlating specific conductance to total dissolved solids for specific sites for all zones being monitored.

B) Ground water quantity descriptions shall include, at a minimum, rates of discharge or usage and elevation of the potentiometric surface in the coal to be mined, in each water-bearing stratum above the coal to be mined, and in each water-bearing stratum which may be potentially impacted below the coal to be mined.

## 2) Surface water information.

The name, location, ownership, and description of all surface water bodies, such as streams, lakes, and impoundments, the location of any discharge into any surface water body in the proposed permit and adjacent areas, and information on surface water quality and quantity sufficient to demonstrate seasonal variation and water usage.

A) Water quality descriptions shall include, at a minimum, baseline information on pH, total suspended solids, total dissolved solids, alkalinity, acidity, sulfates, total iron, total manganese and chlorides. The Department shall allow



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the measurement of specific conductance in lieu of total dissolved solids if the permittee develops site-specific relationships precisely correlating specific conductance to total dissolved solids for specific sites for all surface water points being monitored.

B) Water quantity descriptions shall include, at a minimum, baseline information on seasonal flow rates.

3) If the determination of probable hydrologic consequences required by subsection (e) indicates that adverse impacts on or off the proposed permit area may occur to the hydrologic balance, or that acid-forming or toxic-forming material is present that may result in the contamination of ground or surface water supplies, then information supplemental to that required under subsections (b)(1) and (2) above shall be provided to evaluate such probable hydrologic consequences and to plan remedial and reclamation activities. Such supplemental information shall be based upon drilling, hydrogeologic analyses of water-bearing strata, flood flows, or analysis of other water quality or quantity characteristics.

c) Baseline cumulative impact area information.

1) Hydrologic and geologic information for the cumulative impact area necessary to assess the probable cumulative hydrologic impacts of the proposed operation and all anticipated mining on surface and ground water systems as required by subsection (f) below shall be provided to the Department, if available from appropriate Federal or State agencies.

2) If the information is not available from such agencies, then the applicant may gather and submit this information to the Department as part of the permit application.

3) The permit shall not be approved until the necessary hydrologic and geologic information is available to the Department.

d) The use of modeling techniques, interpolation or statistical techniques may be included as part of the permit application if such techniques will enhance the evaluation of hydrological impacts, but actual surface and ground water information may be required by the Department for the purposes of calibration of such models for each site even when such techniques are used.

e) Determination of the probable hydrologic consequences (PHC).

1) The application shall contain a determination of the probable hydrologic consequences of the proposed operation on the proposed permit area, shadow area and adjacent area, with respect to the hydrologic regime and the quantity and quality of water in surface and ground water systems under all seasonal conditions, including the contents of dissolved and total suspended solids, total iron, pH, total manganese, and other parameters required by the Department if such parameters are necessary to assure an accurate determination of probable hydrologic consequences on a site-specific basis.

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2) The PHC determination shall be based on baseline hydrologic, geologic and other information collected for the permit application and may include data statistically representative of the site.

3) The PHC determination shall include findings on:

A) Whether adverse impacts may occur to the hydrologic balance;  
B) Whether acid-forming or toxic-forming materials are present that could result in the contamination of surface-or ground-water supplies; and

C) What impact the proposed operation will have on:

i) sediment yield from the disturbed areas;  
ii) acidity, total suspended and dissolved solids, and other important water quality parameters of local impact;

iii) flooding or stream-flow alteration;

iv) ground-water and surface-water availability; and

v) other characteristics as required by the Department, based upon public comment, Interagency Committee comment and the Department's technical review; and

D) Whether the underground mining activities conducted after January 19, 1996 may result in contamination, diminution or interruption of a well or spring in existence at the time the permit application is submitted and used for domestic, drinking or residential purposes within the permit, shadow or adjacent areas.

4) An application for a permit revision shall be reviewed by the Department to determine whether a new or updated PHC determination shall be required.

f) Cumulative hydrologic impact assessment.

1) The Department shall provide an assessment of the probable cumulative hydrologic impacts of the proposed operation and all anticipated mining upon surface and ground water systems in the cumulative impact area. This assessment shall be sufficient for purposes of permit approval, to determine whether the proposed operation has been designed to prevent material damage to the hydrologic balance outside the permit area. The Department shall allow the submittal of data and analyses by the permittee in accordance with subsection (c) above.

2) An application for a permit revision shall be reviewed by the Department to determine whether a new or updated assessment shall be required.

g) The application shall include a plan with maps and descriptions, indicating how the relevant requirements of 62 Ill. Adm. Code 1817, including 62 Ill. Adm. Code 1817.41 through 1817.43, will be met. The plan shall be specific to local hydrologic conditions. It shall contain steps to be taken during mining and reclamation, through bond release, to minimize disturbances to the hydrologic balance within the permit, shadow, and adjacent areas; to prevent material damage outside

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the permit area; to meet the applicable Federal and State water quality laws and regulations. The plan shall include the measures to be taken to avoid acid or toxic drainage; prevent, to the extent possible using the best technology currently available, additional contributions of suspended solids to streamflow; provide water treatment facilities when needed; control drainage; restore approximate premining recharge capacity. The plan shall specifically address any potential adverse hydrologic consequences identified in subsection (e) above and shall include preventative and remedial measures.

## h) Ground water monitoring plan.

1) The application shall include a ground water monitoring plan based upon the determination of probable hydrologic consequences required under subsection (e) above and the analyses of all baseline hydrologic, geologic and other information in the permit application. The plan shall provide for the monitoring of parameters that relate to the suitability of the ground water for current and approved post-mining land uses and to the objectives for protection of the hydrologic balance set forth in subsection (g) above. It shall identify the quantity and quality parameters to be monitored, sampling frequency and site locations. It shall describe how the data may be used to determine the impacts of the operation on the hydrologic balance. At a minimum, the parameters to be monitored shall include pH, total dissolved solids, hardness, alkalinity, acidity, sulfates, total iron, total manganese and water levels. The Department shall allow the measurement of specific conductance in lieu of total dissolved solids if the permittee develops site-specific relationships precisely correlating specific conductance to total dissolved solids for specific sites for all zones being monitored. Data shall be submitted to the Department every three months for each monitoring location. The Department may require additional monitoring, such as increased parameters or frequency, if it is determined that the existing or proposed monitoring program is not designed to detect adverse impacts to the hydrologic balance.

2) If an applicant can demonstrate by the use of the probable hydrologic consequences determination and other available information that a particular water-bearing stratum in the proposed permit and adjacent areas is not one which serves as an aquifer which significantly ensures the hydrologic balance within the cumulative impact area, then monitoring of that stratum may be waived by the Department.

## i) Surface water monitoring plan.

1) The application shall include a surface water monitoring plan based upon the determination of probable hydrologic consequences required in subsection (e) above and the analysis of all baseline hydrologic, geologic and other information in the permit application. The plan shall provide for monitoring of parameters

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that relate to the suitability of the surface water for current and approved post-mining land uses, to the objectives for protection of the hydrologic balance as set forth in subsection (g) above, and to the effluent limitations in 40 CFR 434.

2) The plan shall identify the surface water quantity and quality parameters to be monitored, sampling frequency and site locations. It shall describe how the data may be used to determine the impacts of the operation upon the hydrologic balance.

A) At all monitoring locations in the surface water bodies such as streams, lakes and impoundments, that are potentially impacted or into which water will be discharged and at upstream monitoring locations, pH, total dissolved solids, total suspended solids, alkalinity, acidity, sulfates, total iron, total manganese and flow shall be monitored. The Department shall allow the measurement of specific conductance in lieu of total dissolved solids if the permittee develops site-specific relationships precisely correlating specific conductance to total dissolved solids for specific sites for all locations being monitored.

B) For point-source discharges, monitoring shall be conducted in accordance with 40 CFR 122, 123 and 434 and as required by the Illinois Environmental Protection Agency (IEPA).

3) All surface water monitoring reports, including those required by the IEPA, shall be submitted to the Department every three (3) months. The Department shall require additional monitoring if it is determined that the existing or proposed monitoring plan is not adequate to detect adverse impacts to the hydrologic balance.

(Source: Amended at 23 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

## Section 1784.20 Subsurface Control Plan

The permit application shall include a survey which shall show whether structures, including surface and underground agricultural drainage systems or renewable resource lands exist within the proposed permit shadow and adjacent areas and whether subsidence if it occurred could cause material damage or diminution of reasonably foreseeable use of such structures or renewable resource lands. If the survey shows that no such structures or renewable resource lands exist or no such material damage or diminution could be caused in the event of mine subsidence and if the Department agrees with such conclusion, no further information need be provided in the application under this Section. In the event the survey shows such structures or renewable resource lands exist, or that subsidence could cause material damage or diminution of value or foreseeable use of the land, or if the Department determines that such damage or diminution could occur, the application shall include a subsidence control plan which shall contain the following



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## information:

- a) Pre-subsidence survey. Each application must include: A description of the methods of coal removal, such as longwall mining, room-and-pillar, hydraulic mining, or other extraction methods, including the proposed size, sequence, and timing for the development of underground workings.

1) A map of the permit, shadow and adjacent areas at a scale of 1:12,000 or larger if determined necessary by the Department, showing the location and type of structures and renewable resource lands that subsidence may materially damage or for which the value of reasonably foreseeable use may be diminished by subsidence, and showing the location and type of drinking, domestic and residential water supplies that could be contaminated, diminished or interrupted by subsidence.

2) A narrative indicating whether subsidence, if it occurred, could cause material damage to or diminish the value of reasonably foreseeable use of such structures or renewable resource lands or could contaminate, diminish or interrupt drinking, domestic or residential water supplies.

3) A survey of the condition of all structures and facilities that may be materially damaged or for which the reasonably foreseeable use may be diminished by subsidence, within the area encompassed by the applicable angle of draw, as well as a survey of the quantity and quality of all drinking, domestic and residential water supplies within the permit area, subsidence shadow area and adjacent area that could be contaminated, diminished or interrupted by subsidence. If the applicant cannot make this survey because the owner will not allow access to the site, the applicant shall notify the owner, in writing, of the effect that denial of access will have as described in 62 Ill. Adm. Code 1817.121(c)(3)(C). The applicant must pay for any technical assessment or engineering evaluation used to determine the pre-mining condition or value of such structures and facilities and the quantity and quality of drinking, domestic or residential water supplies. The applicant must provide copies of the survey and any technical assessment or engineering evaluation to the property owner. The survey of structures and facilities shall be maintained at the mine office to be provided to the Department upon request. The survey of water quality and quantity shall be provided to the Department.

b) Subsidence control plan. If the survey conducted under subsection (a) above shows that no structures or drinking, domestic or residential water supplies or renewable resource lands exist, or that no material damage or diminution in value or reasonably foreseeable use of such structures or lands would occur, and no contamination, diminution or interruption of such water supplies would occur as a result of mine subsidence, and if the Department agrees with this conclusion, no

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further information need be provided under this subsection. If the survey shows that structures, renewable resource lands or water supplies exist and that subsidence could cause material damage or diminution in value or reasonably foreseeable use, or contamination, diminution or interruption of protected water supplies, of if the Department determines that damage, diminution in value or foreseeable use, or contamination, diminution or interruption could occur, the application must include a subsidence control plan that contains the following information: A map of underground workings which describes the location and extent of areas in which planned subsidence mining methods will be used and which includes all areas where the measures described in subsection (b)(4), (b)(5) and (b)(7) below will be taken to prevent or minimize subsidence and subsidence-related damage.

1) A description of the method of coal removal, such as longwall mining, room-and-pillar removal or hydraulic mining, including the size, sequence and timing of the development of underground workings;

2) A map of the underground workings that describes the location and extent of the areas in which planned subsidence mining methods will be used and that identifies all areas where the measures described in subsections (b)(4), (b)(5) and (b)(7) below will be taken to prevent or minimize subsidence and subsidence-related damage and, when applicable, to correct subsidence-related material damage;

3) A description of the physical conditions, such as depth of cover, seam thickness and lithology of overlying and underlying strata, that affect the likelihood or extent of subsidence and subsidence-related damage;

4) A description of the monitoring, if any, needed to determine the commencement and degree of subsidence so that, when appropriate, other measures can be taken to prevent, reduce or correct material damage in accordance with 62 Ill. Adm. Code 1817.121(c);

5) Except for those areas where planned subsidence is projected to be used, a detailed description of the subsidence control measures that will be taken to prevent or minimize subsidence and subsidence-related damage, such as, but not limited to:

A) Backstowing or backfilling of voids;

B) Leaving support pillars of coal;

C) Leaving areas in which no coal is removed, including a description of the overlying area to be protected by leaving coal in place;

D) Taking measures on the surface to prevent or minimize material damage or diminution in value of the surface; and

E) Geotechnical and engineering analysis of the mining geometry and percent extraction to substantiate a stable subsidence control plan;

6) A description of the anticipated effects of planned subsidence, if any;



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description-of-measures--to--be--taken--to--determine--the--degree--of  
material--damage--or--diminution--of--value--or--foreseeable-use-of-the  
surface;  
g) Other--information--specified--by--the--Department--as--necessary--to  
demonstrate--the--operation--will--be--conducted--in--accordance--with--the  
performance--standards--of--62--Ill--Adm--Code--1817.121--for--subsidence  
control;

(Source: Amended at 23 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

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- 7) For those areas where planned subsidence is projected to be used, a description of methods to be employed to minimize damage from planned subsidence to structures and facilities; or the written consent of the owner of the structure or facility that minimization measures not be taken; or, unless the anticipated damage would constitute a threat to health or safety, a demonstration that the costs of minimizing damage exceed the anticipated costs of repair;
- 8) A description of the measures to be taken in accordance with 62 Ill. Adm. Code 1817.41(j) and 1817.121(c) to replace adversely affected protected water supplies or to mitigate or remedy any subsidence-related material damage to the land and protected structures. In conjunction with this requirement, the applicant shall provide a description of measures to be taken to determine the degree of material damage or diminution of value or foreseeable use of the surface and structures potentially impacted and the impact on water quality or quantity. The applicant shall also provide a plan for resolving disputes between the landowner and the operator over the amount, level or degree of damage, such as third party arbitration; and
- 9) Other information specified by the Department as necessary to demonstrate that the operation will be conducted in accordance with 62 Ill. Adm. Code 1817.121.
- e) A--description--of--the--physical--conditions--such--as--depth--of--cover--seam thickness--and--lithology--which--affect--the--likelihood--or--extent--of subsidence--and--subsidence--related--damage;
- d) Except--for--those--areas--where--planned--subsidence--is--projected--to--be used--a--detailed--description--of--the--subsidence--control--measures--that will--be--taken--to--prevent--or--minimize--subsidence--and--subsidence--related damage--including--but--not--limited--to:
- 1) Backstowing--or--backfilling--of--voids;
  - 2) Leaving--support--pillars--of--coal;
  - 3) Leaving--areas--in--which--no--coal--is--removed--including--a description--of--the--overlying--area--to--be--protected--by--leaving--the coal--in--place;
  - 4) Taking--measures--on--the--surface--to--prevent--material--damage--or lessening--of--the--value--of--reasonably--foreseeable--use--of--the surface--and
  - 5) Monitoring--if--any--to--determine--the--commencement--and--degree--of subsidence--so--that--other--appropriate--measures--can--be--taken--to prevent--or--reduce--material--damage;
- e) A--description--of--the--anticipated--effects--of--planned--subsidence--if any;
- f) A--description--of--measures--to--be--taken--in--accordance--with--the requirements--of--62--Ill--Adm--Code--1817.121(f)--to--mitigate--or--remedy any--subsidence--related--material--damage--to--or--diminution--in--value--or reasonably--foreseeable--use--of--the--land--structures--or--facilities--in conjunction--with--this--requirement--the--operator--shall--provide--a

## DEPARTMENT OF NUCLEAR SAFETY

## NOTICE OF PROPOSED AMENDMENT

- 1) Heading of the Part: Particle Accelerators
- 2) Code Citation: 32 Ill. Adm. Code 390
- 3) Section Number: 390.50  
Proposed Action: Amendment
- 4) Statutory Authority: Implementing and authorized by the Radiation Protection Act of 1990 [420 ILCS 40].
- 5) A Complete Description of the Subjects and Issues Involved: The Department is proposing to modify its rules pertaining to the use of certain types of personnel dosimetry. The current rules authorize the use of film badges and thermoluminescent dosimeters for personnel dosimetry. The U.S. Department of Commerce, National Institutes of Standards and Technology, through the National Voluntary Laboratory Accreditation Program (NVLAP), have accredited a new technology, optically stimulated luminescent (OSL) dosimetry. The Department's rules should not prohibit the use of this new technology, therefore, the rules are being modified to include any dosimetry approved through NVLAP.

6) Will this proposed amendment replace an emergency rule currently in effect? No

7) Does this rulemaking contain an automatic repeal date? No

8) Does this proposed amendment contain incorporations by reference? No

9) Are there any other proposed amendments pending on this Part? No

10) Statement of Statewide Policy Objectives: The Department does not believe that the proposed changes will have an effect on units of local government and will not require units of local government to establish, expand or modify their activities in such a way as to necessitate additional expenditures from local revenues.

11) Time, Place and Manner in which interested persons may comment on this proposed rulemaking: Comments on this proposed rulemaking may be submitted in writing for a period of 45 days following publication of this notice. The Department will consider fully all written comments on this proposed rulemaking submitted during the 45 day comment period. Comments should be submitted to:

Robert B. Holtsclaw  
Staff Attorney  
Department of Nuclear Safety  
1035 Outer Park Drive  
Springfield, Illinois 62704

## DEPARTMENT OF NUCLEAR SAFETY

## NOTICE OF PROPOSED AMENDMENT

(217) 524-1003 (voice)  
(217) 782-6133 (TDD)

12) Initial Regulatory Flexibility Analysis

- A) Types of small businesses, small municipalities or not for profit corporations affected: The Department believes that these amendments will not affect small businesses, not for profit corporations or small municipalities.
- B) Reporting, bookkeeping or other procedures required for compliance: This rulemaking does not require licensees to perform reporting, bookkeeping or other procedures for achieving compliance.
- C) Types of professional skills necessary for compliance: No particular professional skills are necessary for compliance.
- 13) Regulatory Agenda on which this rulemaking was summarized: This rule was not included on either of the 2 most recent agendas because: This change in technology was not anticipated.

The full text of the Proposed Amendment is identical to the text of the Emergency Amendment published in this issue of the Illinois Register on page

DEPARTMENT OF NUCLEAR SAFETY  
 NOTICE OF PROPOSED AMENDMENTS

1) Heading of the Part: Radiation Safety Requirements for Industrial Radiographic Operations

2) Code Citation: 32 Ill. Adm. Code 350

3) Section Number: 350.2030  
 350.3045

4) Statutory Authority: Implementing and authorized by the Radiation Protection Act of 1990 [420 ILCS 40].

5) A Complete Description of the Subjects and Issues Involved: The Department is proposing to modify its rules pertaining to the use of certain types of personnel dosimetry. The current rules authorize the use of film badges and thermoluminescent dosimeters for personnel dosimetry. The U.S. Department of Commerce, National Institutes of Standards and Technology, through the National Voluntary Laboratory Accreditation Program (NVLAP), have accredited a new technology, optically stimulated luminescent (OSL) dosimetry. The Department's rules should not prohibit the use of this new technology, therefore, the rules are being modified to include any dosimetry approved through NVLAP.

6) Will this proposed amendment replace an emergency rule currently in effect? No

7) Does this rulemaking contain an automatic repeal date? No

8) Does this proposed amendment contain incorporations by reference? No

9) Are there any other proposed amendments pending on this Part? No

10) Statement of Statewide Policy Objectives: The Department does not believe that the proposed changes will have an effect on units of local government and will not require units of local government to establish, expand or modify their activities in such a way as to necessitate additional expenditures from local revenues.

11) Time, Place and Manner in which interested persons may comment on this Proposed rulemaking: Comments on this proposed rulemaking may be submitted in writing for a period of 45 days following publication of this notice. The Department will consider fully all written comments on this proposed rulemaking submitted during the 45 day comment period. Comments should be submitted to:

Robert B. Holtsclaw  
 Staff Attorney  
 Department of Nuclear Safety

DEPARTMENT OF NUCLEAR SAFETY  
 NOTICE OF PROPOSED AMENDMENTS

1035 Outer Park Drive  
 Springfield, Illinois 62704  
 (217) 524-1003 (voice)  
 (217) 782-6133 (TDD)

12) Initial Regulatory Flexibility Analysis:

A) Types of small businesses, small municipalities or not for profit corporations affected: The Department believes that these amendments will not affect small businesses, not for profit corporations or small municipalities.

B) Reporting, bookkeeping or other procedures required for compliance: This rulemaking does not require licensees to perform reporting, bookkeeping or other procedures for achieving compliance.

C) Types of professional skills necessary for compliance: No particular professional skills are necessary for compliance.

13) Regulatory Agenda on which this rulemaking was summarized: This rule was not included on either of the 2 most recent agendas because: This change in technology was not anticipated.

The full text of the Proposed Amendment is identical to the text of the Emergency Amendment published in this issue of the Illinois Register on page \_\_\_\_\_.



## DEPARTMENT OF NUCLEAR SAFETY

## NOTICE OF PROPOSED AMENDMENT

1) Heading of the Part: Radiation Safety Requirements for Wireline Service Operations and Subsurface Tracer Studies

2) Code Citation: 32 Ill. Adm. Code 351

3) Section Number: 351.2030  
Proposed Action: Amendment

4) Statutory Authority: Implementing and authorized by Sections 9 and 11 of the Radiation Protection Act of 1990 [420 ILCS 40/9 and 11] and Section 5 of the Personnel Radiation Monitoring Act [420 ILCS 25/5].

5) A Complete Description of the Subjects and Issues Involved: The Department is proposing to modify its rules pertaining to the use of certain types of personnel dosimetry. The current rules authorize the use of film badges and thermoluminescent dosimeters for personnel dosimetry. The U.S. Department of Commerce, National Institutes of Standards and Technology, through the National Voluntary Laboratory Accreditation Program (NVLAP), have accredited a new technology, optically stimulated luminescent (OSL) dosimetry. The Department's rules should not prohibit the use of this new technology, therefore, the rules are being modified to include any dosimetry approved through NVLAP.

6) Will this proposed amendment replace an emergency rule currently in effect? No

7) Does this rulemaking contain an automatic repeal date? No

8) Does this proposed amendment contain incorporations by reference? No

9) Are there any other proposed amendments pending on this Part? No

10) Statement of Statewide Policy Objectives: The Department does not believe that the proposed changes will have an effect on units of local government and will not require units of local government to establish, expand or modify their activities in such a way as to necessitate additional expenditures from local revenues.

11) Time, Place and Manner in which interested persons may comment on this proposed rulemaking: Comments on this proposed rulemaking may be submitted in writing for a period of 45 days following publication of this notice. The Department will consider fully all written comments on this proposed rulemaking submitted during the 45 day comment period. Comments should be submitted to:

Robert B. Holtsclaw  
Staff Attorney  
Department of Nuclear Safety

## DEPARTMENT OF NUCLEAR SAFETY

## NOTICE OF PROPOSED AMENDMENT

1035 Outer Park Drive  
Springfield, Illinois 62704  
(217) 524-1003 (voice)  
(217) 782-6133 (TDD)

12) Initial Regulatory Flexibility Analysis:

A) Types of small businesses, small municipalities or not for profit corporations affected: The Department believes that these amendments will not affect small businesses, not for profit corporations or small municipalities.

B) Reporting, bookkeeping or other procedures required for compliance: This rulemaking does not require licensees to perform reporting, bookkeeping or other procedures for achieving compliance.

C) Types of professional skills necessary for compliance: No particular professional skills are necessary for compliance.

13) Regulatory Agenda on which this rulemaking was summarized: This amendment was not included on either of the 2 most recent agendas because: This change in technology was not anticipated.

The full text of the Proposed Amendment is identical to the text of the Emergency Amendment published in this issue of the Illinois Register on page \_\_\_\_\_:

## DEPARTMENT OF PROFESSIONAL REGULATION

## NOTICE OF PROPOSED AMENDMENTS

1) Heading of the Part: Illinois Certified Shorthand Reporters Act of 1984

2) Code Citation: 68 Ill. Adm. Code 1200

3) Section Numbers: Proposed Action:  
1200.50 Amendment  
1200.75 Amendment  
1200.90 New Section

4) Statutory Authority: Illinois Certified Shorthand Reporters Act of 1984  
[225 ILCS 415].

5) A Complete Description of the Subjects and Issues Involved: Section 1200.90 adds Standards of Professional Conduct for this profession, while Section 1200.75 includes clean-up language on continuing education (CE). Section 1200.50 increases the application fee for CE sponsors from \$200 to \$300 while reducing their renewal fees from \$150 to \$50 per year.

6) Will these proposed amendments replace emergency rules currently in effect? No

7) Does this rulemaking contain an automatic repeal date? No

8) Do these proposed amendments contain incorporations by reference? No

9) Are there any other proposed amendments pending on this Part? No

10) Statement of Statewide Policy Objectives (if applicable): This rulemaking has no impact on local governments.

11) Time, Place and Manner in which interested persons may comment on this Proposed rulemaking:

Interested persons may submit written comments to:

Department of Professional Regulation  
Jean A. Courtney  
320 West Washington, 3rd Floor  
Springfield IL 62786  
217/785-0813

All written comments received within 45 days of this issue of the Illinois Register will be considered.

12) Initial Regulatory Flexibility Analysis:

A) Types of small businesses, small municipalities and not for profit corporations affected: Certified shorthand reporters and continuing

## DEPARTMENT OF PROFESSIONAL REGULATION

## NOTICE OF PROPOSED AMENDMENTS

education sponsors.

B) Reporting, bookkeeping or other procedures required for compliance: None

C) Types of professional skills necessary for compliance: None

13) Regulatory Agenda on which this rulemaking was summarized: July 1998

The full text of the Proposed Amendments begins on the next page:

## DEPARTMENT OF PROFESSIONAL REGULATION

## DEPARTMENT OF PROFESSIONAL REGULATION

## NOTICE OF PROPOSED AMENDMENTS

## NOTICE OF PROPOSED AMENDMENTS

TITLE 68: PROFESSIONS AND OCCUPATIONS  
 CHAPTER VII: DEPARTMENT OF PROFESSIONAL REGULATION  
 SUBCHAPTER b: PROFESSIONS AND OCCUPATIONS

forth under Section 6 of the Act is \$35.  
 3) The fee for application as a continuing education sponsor is \$300. State agencies, State colleges and State universities in Illinois shall be exempt from this fee.

b) Renewal Fees.

1) The fee for the renewal of a certificate shall be calculated at the rate of \$20 per year.

2) The fee for the renewal as a continuing education sponsor shall be calculated at the rate of \$50 per year.

c) General Fees.

1) d) The fee for placing a certificate on inactive status is \$20.  
 2) e) The fee for restoration of a certificate from inactive status is the current renewal fee.

3) f) The fee for restoration of a certificate from other than inactive status is \$10 plus all lapsed renewal fees not to exceed \$150.

g) The fee for issuance of a certificate to an applicant-certified under the laws of another jurisdiction is \$75.

4) h) The fee for a certification of a license record is \$20.

5) The fee for a change of name or address other than during renewal is \$20. No fee is required for name and address changes on Department records when no duplicate certificate is issued.

6) The fee for a wall certificate shall be the actual cost of producing such certificate.

7) The fee for the issuance of a duplicate certificate, for the issuance of a replacement certificate, or for the issuance of a license with a change of name or address other than during the renewal period is \$20. No fee is required for name and address changes on Department records when no duplicate license is issued.

8) The fee for a roster of certificate holders is the cost of producing the roster. The cost of producing the roster shall be determined in accordance with the following formula: Total number of registrants in the list requested divided by 1000 multiplied by the Multiplier, plus Fixed Costs (such as personnel and handling) = Total Roster Cost.

(Source: Amended at 23 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

## Section 1200.75 Continuing Education

## a) Continuing Education (CE) Requirements

1) Beginning with the May 31, 1997, renewal and every renewal thereafter, every registrant who applies for renewal of a certificate of registration as a certified shorthand reporter shall complete during the prerenewal period 10 hours of continuing education (CE) relevant to the practice of shorthand

## PART 1200

## ILLINOIS CERTIFIED SHORTHAND REPORTERS ACT OF 1984

Section	
1200.20	Application for Examination/Licensure
1200.30	Examinations
1200.35	Renewals
1200.40	Restoration
1200.45	Endorsement
1200.50	Fees for the Administration of the Act
1200.60	Annual Report of Board
1200.70	Conduct of Hearings
1200.75	Continuing Education
1200.80	Granting Variances
1200.90	Standards of Professional Conduct

AUTHORITY: Implementing the Illinois Certified Shorthand Reporters Act of 1984 [225 ILCS 415] and authorized by Section 60(7) of the Civil Administrative Code of Illinois [20 ILCS 2105/60(7)].

SOURCE: Adopted at 5 Ill. Reg. 7518, effective July 2, 1981; codified at 5 Ill. Reg. 11024; emergency amendment at 6 Ill. Reg. 916, effective January 6, 1982, for a maximum of 150 days; amended at 6 Ill. Reg. 7448, effective June 15, 1982; emergency amendments at 8 Ill. Reg. 672, effective January 1, 1984, for a maximum of 150 days; amended at 8 Ill. Reg. 16443, effective August 29, 1984; amended at 11 Ill. Reg. 14073, effective August 5, 1987; recodified from Chapter I, 68 Ill. Adm. Code 200 (Department of Registration and Education) to Chapter VII, 68 Ill. Adm. Code 1200 (Department of Professional Regulation) pursuant to P.A. 85-225, effective January 1, 1988, at 12 Ill. Reg. 2917; amended at 12 Ill. Reg. 16718, effective September 30, 1988; amended at 13 Ill. Reg. 18865, effective November 21, 1989; amended at 16 Ill. Reg. 3169, effective February 18, 1992; amended at 19 Ill. Reg. 940, effective January 17, 1995; amended at 23 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_.

## Section 1200.50 Fees for the Administration of the Act

The following fees shall be paid to the Department for the administration of the Act and shall be nonrefundable.

## a) Applications Fees.

1) The fee for application and for a certificate as a certified shorthand reporter is \$25. In addition, the applicants may be required to pay the Department, or its designated testing service, a fee for the cost of providing the examination.

2) The fee to be paid for a certificate issued at the request of the Director of the Administrative Office of the Courts as set



## DEPARTMENT OF PROFESSIONAL REGULATION

## NOTICE OF PROPOSED AMENDMENTS

reporting.

- 2) A prerenewal period is the 24 months preceding May 31 of each odd-numbered year.
- 3) A CE hour means a minimum of 50 minutes of actual clock time spent by a registrant in actual attendance at and completion of an approved CE activity. After completion of the initial CE hour, credit may be given in one-half hour increments.
- 4) A renewal applicant shall not be required to comply with CE requirements for the first renewal of an Illinois certificate of registration.
- 5) Shorthand reporters registered in Illinois but residing and practicing in other states shall comply with the CE requirements set forth in this Section.

b) How to Acquire CE Credits

- 1) CE hours may be earned from:
  - A) Verified attendance at or participation in a program, activity or course through the National Court Reporters Association.
  - B) Verified attendance (e.g., certificate of attendance or certificate of completion) at or participation in a program, activity or course ("program") presented by a continuing education sponsor in subsection (c) below.
  - C) Verified attendance at a program that is of general information value to shorthand reporters but does not directly relate to the reporter's ability to produce an accurate and timely transcript. A maximum of 5 hours credit may be counted during a prerenewal period for such programs, which include:
    - i) Professionalism, including knowledge and application of standards of professional responsibility, impartiality, public relations, attire; and
    - ii) Office procedures, record-keeping, health, including a reporter's approach to personal tax management, planning for retirement or changing careers within reporting, maintaining the individual reporter's health and emotional adjustment, ability to listen, to concentrate, to communicate, to cope.
  - D) Verified personal preparation of educational presentations pertaining to the profession of court reporting and serving as an instructor, speaker or panel member at an approved course will be allowed as CE credit for actual presentation time, plus actual preparation time of up to 2 hours for each hour of presentation. Credits for preparation time shall not be allowed for repetitious presentations. No more than 5 hours of credit can be earned under this category in any one renewal period.
  - E) Writing articles pertaining to the profession of court reporting and published in a state or nationally recognized

## DEPARTMENT OF PROFESSIONAL REGULATION

## NOTICE OF PROPOSED AMENDMENTS

professional journal of court reporting or law. No more than 5 hours of credit can be earned under this category in any one renewal period. Credits will not be allowed for the same article published in more than one publication.

- 2) Courses completed that are a part of the curriculum of a university, college or other educational institution. One semester of course work is equivalent to 15 hours of CE and one quarter of course work is equivalent to 10 hours of CE.

c) CE Sponsors and Programs

- 1) Sponsor, as used in this Section, shall mean the following:

- A) The National Court Reporters Association;
- B) The Illinois Shorthand Reporters Association or any state court reporters association whose course or program has been approved for CE credits under the guidelines of the National Court Reporters Association;
- C) Any computer users group whose program or course has been approved for CE credits under the guidelines of the National Court Reporters Association;
- D) A city, county, state or federal judicial body responsible for coordination and presentation of CE courses or programs for its employees;
- E) A university or college course or adult education program that contributes directly to the Certified Shorthand Reporter's knowledge, ability or competence to perform his/her duties; and
- F) Any other school, college or university, State agency, or any other person, firm or association that has been approved and authorized by the Department to coordinate and present CE courses and programs in conjunction with this Section.

- 2) Entities seeking approval as CE sponsors shall file an application, on forms supplied by the Department, along with the \$-5200 application fee set forth in Section 1200.50 of this Part. (State agencies, State colleges and State universities in Illinois shall be exempt from paying this fee.) Along with the application, the applicant shall submit a list of proposed programs including the description, location, date and time of the programs. The applicant--shall--certify--on--the application shall include the following:

A) Certification:

- i)A) That all programs offered by the sponsor for CE credit will comply with the criteria in subsection (c)(3) below and all other criteria in this Section;

- ii)B) That the sponsor will be responsible for verifying attendance at each program and provide a certificate of attendance as set forth in subsection (c)(10) below;

- iii)E) That upon request by the Department, the sponsor will submit evidence (e.g., certificate of attendance

## DEPARTMENT OF PROFESSIONAL REGULATION

## NOTICE OF PROPOSED AMENDMENTS

or course materials) as is necessary to establish compliance with this Section. Evidence shall be required when the Department has reason to believe that there is not full compliance with this Part and that the information is necessary to ensure compliance.

iv) That each sponsor shall submit to the Department written notice of program offerings, including program offerings of subcontractors, 30 days prior to course dates. Notice shall include the description, location, date and time of the program to be offered; a copy of sample program with faculty, course materials and syllabi.

## 3) All programs shall:

A) Contribute to the advancement, extension and enhancement of the professional skills and knowledge of the individual registrant in the practice of shorthand reporting;

B) Include one or more of the following subjects directly related to the shorthand reporter's ability to produce accurate and timely transcripts:

i) English, including grammar, punctuation, general principles, spelling, vocabulary, etymology, usage, semantics, regional and minority dialects or colloquialisms, English history, transcript styles;

ii) Medical, including Greek and Latin derivatives, homonyms, abbreviations, surgical procedures, pharmacy, anatomy and physiology, specialized medical fields (i.e., neurology, dentistry, radiology, gastroenterology), with emphasis on terminology and techniques or concepts likely to be encountered during litigation;

iii) Legal, including terminology, research techniques, presentations on the various subdivisions of law (i.e., criminal torts, domestic relations, corporate, admiralty, patent, environmental) and procedural law (i.e., depositions, trials, administrative proceedings) presentations by legal specialists or experts in the field, history of the American/world legal system;

iv) Technical subjects presented by experts with emphasis on terminology and concepts encountered by the shorthand reporter during litigation (i.e., accident reconstruction, chemistry, construction, geology, insurance, maritime, aerospace, products liability, industrial and environmental pollution);

v) Technology related to new developments in the field of reporting (i.e., computer technology, computer techniques, video, telecommunications, equipment

## DEPARTMENT OF PROFESSIONAL REGULATION

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maintenance);

vi) General litigation procedures as they relate to court, deposition and administrative proceedings (i.e., reporting depositions, court hearings, arbitrations, conventions and the court reporter's responsibility with regard to these proceedings, notary responsibilities, marking exhibits, reading back, going on and off the record, review of statutes, rules related to the reporter);

vii) Transcript preparation, including indexing of witnesses, exhibits, formats, dictating, editing and scoping, reference libraries and research techniques, proofreading; and

viii) Management, including financial, marketing, personnel, equipment maintenance, time and stress management;

C) Be relevant to the needs of shorthand reporters and also to the reporting service needs of the users;

D) Be developed and presented by persons with education and/or experience in the subject matter of the program;

E) Specify for whom the program is primarily designed, the course objectives, course content and teaching methods to be used; and

F) Specify the number of CE hours that may be applied to fulfilling the Illinois CE requirements for renewal of the certification of registration.

4) Each CE program shall provide a mechanism for evaluation of the program by the participants. The evaluation may be completed on-site immediately following the program or an evaluation questionnaire may be distributed to participants to be completed and returned by mail. The sponsor and the instructor, together, shall review the evaluation outcome and revise subsequent programs accordingly.

5) An approved sponsor may subcontract with individuals and organizations to provide approved programs.

6) Continuing education credits may be awarded for home study courses and correspondence courses, provided they are courses administered by approved sponsors.

7) All programs given by approved sponsors shall be open to all registered shorthand reporters and not be limited to members of a single organization or group.

8) Continuing education credit hours used to satisfy the CE requirements of another jurisdiction may be applied to fulfill the CE requirements of the State of Illinois.

9) To maintain approval as a sponsor, each sponsor shall submit to the Department by May 31 of each odd-numbered year a renewal application, the required \$-300 fee set forth in Section 1200.50 of this Part, and a list of courses and programs offered within

## DEPARTMENT OF PROFESSIONAL REGULATION

## NOTICE OF PROPOSED AMENDMENTS

the last 24 months. The list shall include a brief description, location, date and time of each course given.

- 10) Certificate of Attendance. It shall be the responsibility of a sponsor to provide each participant in a program with a certificate of attendance or participation. The sponsor's certificate of attendance shall contain:

- A) The name, address and certificate number of the sponsor;
- B) The name and address of the participant;
- C) A brief statement of the subject matter;
- D) The number of hours attended in each program;
- E) The date and place of the program; and
- F) The signature of the sponsor.

- 11) The sponsor shall maintain attendance records for not less than 5 years.

- 12) The sponsor shall be responsible for assuring that no renewal applicant shall receive CE credit for time not actually spent attending the program.

- 13) Upon the failure of a sponsor to comply with any of the foregoing requirements, the Department, after notice to the sponsor and hearing before and recommendation by the Board (see 68 Ill. Adm. Code 1110), shall thereafter refuse to accept for CE credit attendance at or participation in any of that sponsor's CE programs until such time as the Department receives assurances of compliance with this Section.

- 14) Notwithstanding any other provision of this Section, the Department or Board may evaluate any sponsor of any approved CE program at any time to ensure compliance with requirements of this Section.

d) Activities Not Qualifying for CE Credit

- 1) Certain activities that shall not be considered acceptable for continuing education credits include, but shall not be limited to, the following:

- A) Attendance or participation at professional or association business meetings, conferences, general sessions, elections, policymaking sessions or program orientation;

- B) Serving on committees;

- C) Entertainment and recreation;

- D) Tours, visiting exhibits;

- E) Any function for which the registrant receives remuneration as part of his/her regular employment;

- F) In-house training on office equipment; and

- G) Courses with a main thrust of teaching nonverbal skills (i.e., golf, tennis, dancing, basket-weaving).

e) Certification of Compliance with CE Requirements

- 1) Each renewal applicant shall certify, on the renewal application, full compliance with the CE requirements set forth in subsections (a) and (b) above.

- 2) The Department shall conduct random audits to verify compliance

## DEPARTMENT OF PROFESSIONAL REGULATION

## NOTICE OF PROPOSED AMENDMENTS

with CE requirements.

- 3) The Department may require additional evidence (e.g., certificate of attendance). This additional evidence shall be required in the context of the Department's random audit. It is the responsibility of each renewal applicant to retain or otherwise produce evidence of compliance.

- 4) When there appears to be a lack of compliance with CE requirements, an applicant shall be notified in writing and may request an interview with the Board. At that time the Board may recommend that steps be taken to begin formal disciplinary proceedings as required by Section 10-65 of the Illinois Administrative Procedure Act [5 ILCS 100/10-65].

f) Continuing Education Earned in Other Jurisdictions-

- 1) If a registrant has earned CE hours offered in another state or territory not given by an approved sponsor for which the licensee will be claiming credit toward full compliance in Illinois, the applicant shall submit an individual program approval request form, along with a \$25 processing fee, prior to participation in the program or within 90 days of completion of the CE-program-and prior to expiration of the license. The Board shall review and recommend approval or disapproval of the program using the criteria set forth in subsection (c)(3) of this Section. ~~Applicants may seek individual program approval prior to the participation in the program.~~

- 2) If a licensee fails to submit an out of state CE approval form within the required time frame, late approval may be obtained by submitting the approval request form with the \$25 processing fee plus a \$10 per hour late fee not to exceed \$150. The Board shall review and recommend approval and disapproval of the program using the criteria set forth in subsection (c)(3) of this Section.

- g) Restoration of Nonrenewed or Inactive Certificate of Registration. Upon satisfactory evidence of compliance with CE requirements, the Department shall restore the certificate upon payment of the required fee as provided by Section 1200.50 of this Part.

h) Waiver of CE Requirements

- 1) Any renewal applicant seeking renewal of a certificate of registration without having fully complied with these CE requirements shall file with the Department a renewal application along with the required fee set forth in Section 1200.50 of this Part, a statement setting forth the facts concerning non-compliance and request a waiver of the CE requirements on the basis of these facts. A request for waiver shall be made prior to the renewal date. If the Department, upon the written recommendation of the Board, finds from such affidavit or any other evidence submitted that extreme hardship has been shown for granting a waiver, the Department shall waive enforcement of CE requirements for the renewal period for which the applicant has



## DEPARTMENT OF PROFESSIONAL REGULATION

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applied.

A) Extreme hardship shall be determined on an individual basis by the Board and be defined as an inability to devote sufficient hours to fulfilling the CE requirements during the applicable prerenewal period because of:

- i) Full-time service in the armed forces of the United States during a substantial part of the prerenewal period;
  - ii) An incapacitating illness documented by a statement from a currently licensed physician;
  - iii) A physical inability to travel to the sites of approved programs documented by a currently licensed physician;
  - iv) Being retired from practice and not performing any reporting services; or
  - v) Any other similar extenuating circumstances.
- B) Persons employed as full-time court reporters under the Court Reporters Act (705 ILCS 701) may apply for a waiver from the continuing education requirements. The waiver shall be granted upon the submission of evidence satisfactory to the Department (i.e., statement from employer) that the certified shorthand reporter is employed as a full-time court reporter under the Court Reporters Act.
- 2) Any renewal applicant who, prior to the expiration date of the license, submits a request for a waiver, in whole or in part, pursuant to the provisions of this Section, shall be deemed to be in good standing until the final decision on the application is made by the Department.

(Source: Amended at 23 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

## Section 1200.90 Standards of Professional Conduct

In order to establish and maintain a high standard of integrity in the practice of shorthand reporting, the following Standards of Professional Conduct shall be binding on every person holding a certificate of registration as a certified shorthand reporter.

- a) A licensee shall be fair and impartial toward each participant in all aspects of reported proceedings.
- b) A licensee should only accept an assignment if his/her level of competence will result in the preparation of an accurate transcript and will remove himself/herself from an assignment if he/she believes his/her abilities are inadequate, recommending or assigning another licensee only if such licensee has the competence required for such assignment.
- c) A licensee, if requested, shall provide information regarding services to be rendered regarding administration of professional services to

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all parties. The licensee must strive to meet promised delivery dates whenever possible, make timely delivery of transcripts when no date is specified, and provide immediate notification of delays.

d) A licensee shall be alert to situations that are conflicts of interest of that may give the appearance of a conflict of interest. If a conflict arises, the licensee must disclose that conflict or potential conflict.

e) A licensee who becomes impaired and unable to function according to the standards of practice should immediately seek inactive status and refrain from practice. It is the licensee's responsibility to seek supervision and/or personal therapy for any problem that is interfering with the ability to perform professional services.

f) A licensee shall preserve the confidentiality and ensure the security of information, oral or written, entrusted to the licensee by any and all of the parties in a proceeding.

g) It is the licensee's responsibility to preserve his/her shorthand notes for a period of no less than five years, except as otherwise prescribed by law, through storage of the original paper notes and/or an electronic copy of either the shorthand notes or the English transcript of the notes on computer disks, cassettes, backup tape systems, or optical or laser disk systems.

h) A licensee's signature, license number and expiration date shall be affixed only to a transcript of his/her stenographic notes to certify to its correctness if the transcript has been prepared by him/her or under his/her direct supervision.

i) A licensee shall not permit the use of his/her name or firm's name, nor shall a licensee be associated in business ventures with persons or firms that the licensee has reason to believe to be engaging in fraudulent or dishonest business practices.

j) A licensee having knowledge of any alleged violation of the Certified Shorthand Reporter Act shall cooperate with the Department or appropriate governmental agency, furnishing such information or assistance as may be required to conduct an investigation resulting from a complaint.

k) The licensee shall at all times be aware of and avoid not only the fact of, but the appearance of, impropriety, which may include, but is not limited to:

- 1) The establishment of contingent fees as a basis of compensation.
- 2) The giving or receiving of, directly or indirectly, any gift, incentive, reward or anything of value to anyone as a condition for the performance of professional services.
- 3) The offering to pay, either directly or indirectly, any commission or other consideration in order to secure professional assignments.
- 4) The entering into any financial relationship, written or oral, with counsel, parties in interest or their intermediaries that:
  - A) undermines the actual or perceived impartiality of the court reporter; or

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B) does not provide or offer any party in interest comparable court reporting services in the same proceedings.

l) A licensee shall be truthful and accurate when making public statements or when advertising qualifications or services provided.

m) A licensee shall meet all mandated continuing education requirements and should keep abreast of current literature and technological advances and developments.

n) The Department hereby incorporates by reference "The Code of Ethics" of the National Court Reporters Association, 118 Park Street, S.E., Vienna, Virginia 22180, with no later amendments or editions.

(Source: Added at 23 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

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1) Heading of the Part: Nursing Home Administrators Licensing and Disciplinary Act

2) Code Citation: 68 Ill. Adm. Code 1310

3) Section Numbers: Proposed Action:

1310.20	Amendment
1310.30	Amendment
1310.40	Amendment
1310.50	Amendment
1310.70	Amendment
1310.80	Amendment
1310.85	Amendment
1310.100	New Section

4) Statutory Authority: Nursing Home Administrators Licensing and Disciplinary Act [225 ILCS 70]

5) A Complete Description of the Subjects and Issues Involved: Public Act 90-0061, effective December 30, 1997, includes the reauthorization of the Nursing Home Administrators Licensing and Disciplinary Act. This proposed rulemaking updates the rules to conform with the Act. It clarifies various aspects of continuing education and changes fee references to reflect that the fees under this Act are now set by rule. Section 1310.100 adds Professional Conduct Standards.

6) Will these proposed amendments replace emergency rules currently in effect? No

7) Does this rulemaking contain an automatic repeal date? No

8) Do these proposed amendments contain incorporations by reference? No

9) Are there any other proposed amendments pending on this Part? No

10) Statement of Statewide Policy Objectives (if applicable): This rulemaking has no impact on local governments.

11) Time, Place and Manner in which interested persons may comment on this Proposed rulemaking: Interested persons may submit written comments to:

Department of Professional Regulation  
Attention: Jean A. Courtney  
320 West Washington, 3rd Floor  
Springfield IL 62786  
217/785-0813; Fax: 217/782-7645

All written comments received within 45 days of this issue of the Illinois

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Register will be considered.

12) Initial Regulatory Flexibility Analysis:

A) Types of small businesses, small municipalities and not for profit corporations affected: Those providing nursing home services.

B) Reporting, bookkeeping or other procedures required for compliance:  
None

C) Types of professional skills necessary for compliance: Nursing home administrator skills are required for licensure.

13) Regulatory Agenda on which this rulemaking was summarized: July 1998

The full text of the Proposed Amendments begins on the next page:

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## TITLE 68: PROFESSIONS AND OCCUPATIONS

## CHAPTER VII: DEPARTMENT OF PROFESSIONAL REGULATION

## SUBCHAPTER b: PROFESSIONS AND OCCUPATIONS

## PART 1310

NURSING HOME ADMINISTRATORS LICENSING  
AND DISCIPLINARY ACT

Section	
1310.10	Statutory Authority (Repealed)
1310.20	Temporary License
1310.30	Application for Examination
1310.40	Approved Nursing Home Administration Courses
1310.50	Qualifying Experience
1310.60	Examination
1310.65	Fees
1310.70	Endorsement
1310.75	Renewals
1310.80	Restoration
1310.85	Continuing Education
1310.90	Granting Variances
1310.100	<u>Professional Conduct Standards</u>

**AUTHORITY:** Implementing the Nursing Home Administrators Licensing and Disciplinary Act [225 ILCS 70] and authorized by Section 60(7) of the Civil Administrative Code of Illinois [20 ILCS 2105/60(7)].

**SOURCE:** Adopted at 5 Ill. Reg. 1500, effective February 1, 1981; codified at 5 Ill. Reg. 11045; amended at 5 Ill. Reg. 14171, effective December 3, 1981; emergency amendment at 6 Ill. Reg. 916, effective January 6, 1982, for a maximum of 150 days; amended at 6 Ill. Reg. 7448, effective June 15, 1982; amended at 9 Ill. Reg. 5364, effective April 8, 1985; amended at 10 Ill. Reg. 16715, effective September 22, 1986; transferred from Chapter I, 68 Ill. Adm. Code 310 (Department of Registration and Education) to Chapter VII, 68 Ill. Adm. Code 1310 (Department of Professional Regulation) pursuant to P.A. 85-225, effective January 1, 1988, at 12 Ill. Reg. 2955; amended at 13 Ill. Reg. 15653, effective September 25, 1989; amended at 16 Ill. Reg. 12565, effective July 27, 1992; amended at 17 Ill. Reg. 17220, effective September 27, 1993; amended at 22 Ill. Reg. 3887, effective February 5, 1999; amended at 23 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_.

## Section 1310.20 Temporary License

- a) An applicant for a temporary license shall file an application on forms supplied by the Department, together with:
- 1) A statement of sound physical and mental health, dated within one year preceding application, signed by a currently licensed physician (nothing in this subsection shall require a physical or mental examination for any applicant who is a member of a



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*recognized church or religious denomination which teaches reliance on spiritual means alone for healing)* (the ~~the~~ Nursing Home Administrators Licensing and Disciplinary Act (the Act) [225 ILCS 701] (~~###-Rev--Stat--1991--ch--111--par--3653~~;

2) Certification of graduation from high school or proof of a general education diploma (GED);

3) Certified education/experience records of any one of the following:

A) Graduation from an accredited college or university with the minimum of a Baccalaureate Degree;

B) Completion of an approved course of instruction in nursing home administration as outlined in Section 1310.40;

C) Graduation from a three year diploma nurse program and an Employer's Affidavit certifying to two years of qualifying experience as described in Section 1310.50; or

D) An associate degree or a minimum of 60 semester hours or 90 quarter hours of credit earned from an accredited college or university and an Employer's Affidavit certifying to two years of qualifying experience as described in Section 1310.50;

4) Certification, for those applying pursuant to Section 3(3) of the Act, that the applicant is certified by a recognized church or religious denomination which teaches reliance on spiritual healing, as having been approved to administer institutions certified by such church or denomination for the care and treatment of the sick in accordance with its teaching. Such applicant will be issued a Limited Temporary Nursing Home Administrator License which will allow the individual to be an administrator in an institution of the certifying church or denomination;

5) An employer's statement of the acceptance or appointment of the applicant as a full-time nursing home administrator in a facility licensed to provide nursing care by the Illinois Department of Public Health, which includes the expected beginning date of the applicant's employment as an administrator. For purposes of this Section, "full-time" shall mean working at least as many hours as the Illinois Department of Public Health requires of nursing home administrators in that particular facility;

6) A complete work history since completion of education set forth in subsection (a)(2) above until present; and

7) The required fee set forth in Section 1310.65 of this Part 14-of the-Nursing-Home-Administrators-Licensing-and-Disciplinary-Act.

b) An applicant for a temporary license as a nursing home administrator may act as a nursing home administrator for a period of up to 60 days prior to the issuance of a license if the applicant has submitted the required fee and an application for licensure to the Department. This 60-day period may be extended until the next Board meeting if action by the Board is required. The applicant shall keep a copy of the

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*submitted application on the premises where the applicant is engaged in the practice as a nursing home administrator. The authority to practice shall terminate immediately upon the denial of licensure by the Department or the withdrawal of the application.* (Section 9 of the Act)

c) The holder of a temporary license shall only be authorized to serve as administrator of the facility indicated on the application. A temporary license as an administrator becomes void and shall be surrendered upon the termination, or interruption, of the holder's service as an administrator to the facility for which the temporary license was granted or one year from the date of issuance, whichever comes first. No permanent license will be issued until the temporary license has been returned to the Department. An individual shall be issued only one temporary license within a three year period.

d) An applicant may request in writing an extension of a temporary license and pay a \$20 processing fee which covers the cost of printing a new temporary license. Upon the recommendation of the Board and approval by the Department, a temporary license shall be extended for an additional ~~twelve--t~~ 12 months, or any portion thereof, for the following reasons:

1) Interruption of work during the initial ~~twelve--t~~ 12 month period of temporary licensure for service in the military;

2) Interruption of the initial ~~twelve--t~~ 12 month period for incapacitating illness and/or hospitalization verified by a physician; or

3) Interruption of the initial ~~twelve--t~~ 12 month period because of an anticipated change of residence necessitating surrender of the temporary certificate.

e) A temporary license shall be extended upon request from the license holder pending the successful completion of the next available nursing home administrator examination and the permanent license being issued. No license will be issued until the temporary license has been returned to the Department. In the event the individual fails to take the next available examination or fails to successfully complete the next available examination for licensure set forth in Section 1310.60 of this Part, the temporary license shall be void and the individual shall be practicing as a nursing home administrator without a license and subject to discipline in accordance with Section 17 of the Act.

f) Upon approval of the temporary license, the applicant shall be eligible to sit for the examination set forth in Section 1310.60.

(Source: Amended at 23 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

## Section 1310.30 Application for Examination

a) An applicant for a license as a nursing home administrator shall file an application on forms supplied by the Department, at least 60 days

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prior to an examination date, together with:

- 1) Certification of graduation from high school or a GED;
- 2) Certified records of education and experience of any one of the following:

- A) Graduation from an accredited college or university with the minimum of a Baccalaureate Degree;
- B) Satisfactory completion of an approved course of instruction in nursing home administration as outlined in Section 1310.40;
- C) Graduation from a three year diploma nurse program and an Employer's Affidavit certifying two years of qualifying experience as described in Section 1310.50; or
- D) An associate degree or a minimum of 60 semester or 90 quarter hours of credit earned from an accredited college or university and an Employer's Affidavit certifying to the applicant's qualifying experience as described in Section 1310.50;

- 3) Certification, for those applying pursuant to Section 3(3) of the Act, that the applicant is certified by a recognized church or religious denomination which teaches reliance on spiritual means alone for healing, as having been approved to administer institutions certified by such church or denomination for the care and treatment of the sick in accordance with its teaching. Such applicant upon successful completion of the examination set forth in Section 1310.60(f) of this Part, will be issued a Limited Nursing Home Administrator License which will allow the individual to be an administrator in an institution of the certifying church or denomination;

- 4) A statement of sound physical and mental health, dated within one year preceding application, signed by a currently licensed physician, (nothing in this subsection shall require a physical or mental examination for any applicant who is a member of a recognized church or religious denomination which teaches reliance on spiritual means alone for healing) (Section 3(3) of the Act);

- 5) A complete work history since completion of education set forth in subsection (a) above; and

- 6) The required fee set forth in Section 1310.65 of this Part 14-of the-Act.

- b) An applicant for a license by examination who has taken the National Association of Board of Examiners for Nursing Home Administrators examination in another jurisdiction shall have the examination scores submitted to the Department by the reporting entity. The passing score shall be 75 prior to July 1993. Beginning in July 1993, the passing score shall be a scale score of 113 in accordance with Section 1310.60 of this Part.

(Source: Amended at 23 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

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Section 1310.40 Approved Nursing Home Administration Courses

The Department, upon the recommendation of the Nursing Home Administrators Licensing and Disciplinary Board (the "Board"), shall approve courses of instruction in nursing home administration offered by an accredited college or university which include instruction in the following areas:

- a) Nursing Home Administration; including planning, organization, operations and services, resource development, supervision of staff, and control and evaluation of facility performance. Government Relations; including state and federal laws (i.e., Social Security Act (42 USC 8-5-6- 301 et seq.) and Nursing Home Care Act [210 ILCS 45] ~~411-Rev-Stat-1991-ch-111-1/2-par-411-101-et-seq-7~~) and rules and regulations for both programs and physical plants which relate to the nursing home profession.
- b) Personnel Management; including managing people for the specific needs of the long-term care facility, recruitment and selection, orientation, training and development of employees, development of employee appraisal programs, communications, wage and salary administration, union procedures, and employee-management relations, discipline and morale.
- c) Accounting and Financial Management; including basic accounting, adjustment of accounts, preparation of financial statements, financial management planning, effective use of resources, financial performance evaluation, cost analysis, and budgeting.
- d) Social Gerontology and/or Geriatrics; including biology of aging, psychology of aging, changing social roles of aging, personal adjustment to aging, programs for health improvement and rehabilitation, financial aspects of aging, retirement, independence and dependency of aging persons, societal disengagement, impact of living arrangements, and interaction between the institution and the needs of patients.

(Source: Amended at 23 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

Section 1310.50 Qualifying Experience

Qualifying experience for applicants under Section 1310.20(a)(3)(C) and (D) and 1310.30(b)(3) and (4) shall include one of the following:

- a) Two years of full-time employment as an assistant nursing home administrator or director of nursing in a facility licensed by the Illinois Department of Public Health pursuant to the Nursing Home Care Act; or full-time employment as an administrator of a related-facility for two-years-or-more-Related-facilities--include--hospitals--with long-term-care--beds--or-other-licensed-long-term-care-facilities--not having-nursing-care-beds--licensed-by-the-Illinois-Department-of-Public

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~~Health--Experience--as--an--assistant--administrator--or--director--of nursing--in--such--a--facility--shall--not--qualify~~

- b) Two years of management experience in a corporation which owns and operates licensed nursing home facilities. This experience shall include direct contact with the nursing home administrator in the implementing, coordinating, supervising, and evaluating the daily operations of the nursing homes under his charge and ensuring that the laws, regulations, policies, and procedures for nursing home facilities or related facility were implemented and followed.

(Source: Amended at 23 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

## Section 1310.70 Endorsement

- a) An applicant for a license as a nursing home administrator who is licensed under the laws of another jurisdiction of the United States shall file an application with the Department, together with:

- 1) Certification of graduation from high school or a GED;
- 2) Verification, on forms provided by the Department, of education and/or qualifying experience of any one of the following:

- A) Graduation from an accredited college or university with the minimum of a Baccalaureate Degree;
- B) Completion of an approved course of instruction in nursing home administration as outlined in Section 1310.40;
- C) Graduation from a three year diploma nurse program and an Employer's Affidavit certifying to two years of qualifying experience as described in Section 1310.50;
- D) An associate degree or a minimum of 60 semester or 90 quarter hours of credit earned from an accredited college or university and an Employer's Affidavit certifying to the applicant's qualifying experience as described in Section 1310.50; or
- E) Certification of completion of the Professional Certification Program for Nursing Home Administrators developed by the Foundation of the American College of Health Care Administrators;

- 3) Certification, for those applying pursuant to Section 3(3) of the Act, that the applicant is certified by a recognized church or religious denomination which teaches reliance on spiritual means alone for healing, as having been approved to administer institutions certified by such church or denomination for the care and treatment of the sick in accordance with its teaching. Such applicant will be issued a Limited Nursing Home Administrator License which will allow the individual to be an administrator in an institution of the certifying church or denomination;

- 4) A certification from the U.S. jurisdiction of original licensure,

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stating:

- A) The time during which the applicant was licensed in that state;

- B) Whether the file on the applicant contains any record of any disciplinary actions taken or pending pursuant to Section 17 of the Act; and

- C) Examination(s) taken and examination scores received;

- 5) A statement of sound physical and mental health, dated within one year preceding application, signed by a currently licensed physician (nothing in this subsection (a)(3) shall require a physical or mental examination for any applicant who is a member of a recognized church or religious denomination which teaches reliance on spiritual means alone for healing) (Section 3(3) of the Act);

- 6) A work history since completion of education as set forth in subsection (a)(1) above;

- 7) Successful completion of the Illinois Supplemental examination in accordance with Section 1310.60(c) of this Part; and

- 8) The required fee as set forth in Section 1310.65 of this Part ~~14 of the Act.~~

- b) The Department shall examine each endorsement application to determine whether the requirements in the other jurisdiction at the date of licensure were substantially equivalent to the requirements then in force in this State, if the applicant's qualifications were, at the date of licensure in the other jurisdiction, substantially equivalent to the requirements then in force in this State, and whether the applicant has otherwise complied with the Act.

- c) When the accuracy of any submitted documentation, or the relevance or sufficiency of the course work or experience is questioned by the Department because of a lack of information, discrepancies or conflicts in information given, or a need for clarification, the applicant seeking licensure by endorsement shall be requested to:

- 1) Provide such information as may be necessary; and/or
- 2) Appear for an interview before the Board to explain such relevance or sufficiency, clarify information, or clear up any discrepancies or conflicts in information.

- d) The Department shall either approve an applicant to sit for the Illinois Supplemental examination or notify the applicant in writing of the reasons for the denial of the application.

(Source: Amended at 23 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

## Section 1310.80 Restoration

- a) A person seeking restoration of a license which has expired for 5 less than five--45 years or less shall have the license restored upon payment of \$20 ±0 plus all lapsed renewal fees required by Section



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1310.65 of this Part 14--of--the--Act and proof of the successful completion of 36 hours of continuing education or 3 three--(3) semester hours of completed college level course work in accordance with Section 1310.85 during the 2 two years prior to restoration.

b) A person seeking restoration of a license which has been placed on inactive status for 5 less--than--five--(5) years or less shall have the license restored upon payment of the current renewal fee and proof of the successful completion of 36 hours of continuing education or three (3) semester hours of completed college level course work in accordance with Section 1310.85 during the 2 two years prior to restoration.

c) A person applying for restoration of a license as a nursing home administrator which has been expired or on inactive status for more than five--(5) years shall file an application with the Department, together with proof of 36 hours of continuing education or three--(3) semester hours of completed college level course work in accordance with Section 1310.85 during the 2 two years prior to restoration and the fee required by Section 14 of the Act. The applicant shall also:

1) Submit certification of licensure as a nursing home administrator in another jurisdiction and active practice for 3 of the last 5 years prior to application. Such certification of licensure shall include a statement from the appropriate board of licensing authority in another jurisdiction that the licensee was licensed and in good standing; or

2) Submit an affidavit attesting to military service as provided in Section 11 of the Act; or

3) Submit proof of an additional 36 hours of continuing education in accordance with Section 1310.85 completed within 2 years prior to restoration application; or

4) Pass both portions of the examination provided for in Section 1310.60. Persons--who--must--take--both--portions--of--the--examination are--exempt--from--the--36--hour--CE--requirement--

d) When the accuracy of any submitted documentation, or the relevance or sufficiency of the course work or experience is questioned by the Department because of a lack of information, discrepancies or conflicts in information given, or a need for clarification, the licensee seeking restoration shall be requested to:

1) Provide such information as may be necessary; and/or

2) Appear for an interview before the Board to explain such relevance or sufficiency, clarify information, or clear up any discrepancies or conflicts in information. Upon recommendation of the Board and approval by the Department, an applicant shall have the license restored.

(Source: Amended at 23 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

Section 1310.85 Continuing Education

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a) Continuing Education Hour Requirements

1) Every renewal applicant shall complete 36 hours of Continuing Education (CE) relevant to the practice of nursing home administration required during each pre-renewal period. The Department shall conduct random audits to verify compliance with this Section. The pre-renewal period is the 24 months preceding the expiration date of the license.

2) A renewal applicant is not required to comply with CE requirements for the first renewal following the original issuance of the license.

3) Nursing home administrators licensed in Illinois but residing and practicing in another states must comply with the CE requirements set forth in this Section.

b) Activities for which CE credit may be earned are as follows:

1) Verified attendance or participation in any continuing education course approved by the National Continuing Education Review Service of the National Association of Boards of Examiners of Nursing Home Administrators.

2) Verified attendance at or participation in a program given by a sponsor as set forth in subsection (c)(1) of this Section.

3) A maximum of 12 hours per pre-renewal period for:

A) papers prepared or delivered before recognized nursing home administration and nursing home organizations;

B) papers published in nationally recognized nursing home administration journals;

C) a chapter in a book of nursing home administration;

D) self-study courses taken through an accredited college or university or an approved sponsor; and

E) teleconferencing with a live moderator through an accredited college or university or an approved sponsor.

4) A licensee who serves as an instructor, speaker or discussion leader of an approved course will be allowed CE course credit for actual presentation time, plus actual preparation time of up to 2 hours for each hour of presentation. Preparation time shall not be allowed for presentations of the same course and will only be allowed for additional study or research. In no case shall credit for actual time of presentation and preparation be given for more than 9 hours during any renewal period.

5) The continuing education hours used to satisfy the CE requirements for renewal of a nursing home administrator license held in another jurisdiction shall be applied to fulfillment of the CE requirements for renewal of an Illinois nursing home administrator license.

6) Courses that are part of the curriculum of a university, college or other educational institution shall be allotted CE credit at the rate of 12 CE hours for each semester hour or 8 CE hours for each quarter hour of school credit awarded. Three--(3) semester hours--of--course--work--relevant--to--nursing--home--administration

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~~completed--at--an--accredited--college--or--university--one--semester--of--course--work--is--equivalent--to--15--hours--of--CE--and--one--quarter--of--course--work--is--equivalent--to--10--hours--of--CE.~~

- 7) A CE hour equals 60 minutes. After completion of the initial CE hour, credit may be given in one-half hour increments.
- 8) No credit will be given for activities including, but not limited to, attendance at meetings or reading of journals.

## c) CE Sponsors and Programs

- 1) Sponsor, as used in this Section, shall mean:

- A) ~~The Life Services Network of Illinois~~ The Illinois Association-of-Homes-for-the-Aging;
- B) ~~The Illinois Council on Long Term Care;~~
- C) ~~County Nursing Home Association of Illinois;~~
- D) ~~Illinois Health Care Association;~~
- E) ~~The Illinois Nursing Home Administrators Association; or~~
- F) ~~National Continuing Education Review Service;~~
- G) ~~The Illinois Chapter of American College of Health Care Administrators; or~~

H) ~~Any other school, college or university, State agency, or any other person, firm, or association which has been approved and authorized by the Department to coordinate and present continuing education courses and programs in conjunction with this Section.~~

- 2) A sponsor shall file a sponsor application, along with the required fee set forth in Section 130.65 of this Part 14-of--the Act, which certifies:

- A) that all courses and programs offered by the sponsor for CE credit will comply with the criteria in subsection (c)(5) below and all other criteria in this Section. The applicant shall be required to submit a sample 3 hour CE program with course materials, presenter qualifications and course outline for review prior to being approved as a CE sponsor;
- B) that the sponsor will be responsible for verifying attendance at each course or program and provide a certificate of completion as set forth in subsection (c)(7); and
- C) that upon request by the Department, the sponsor will submit such evidence as is necessary to establish compliance with this Section. Such evidence shall be required when the Department has reason to believe that there is not full compliance with the Act and this Part and that this information is necessary to ensure compliance.

- 3) Each sponsor shall submit by November 30 of each odd-numbered year a sponsor renewal application along with the required fee set forth in Section 130.65 of this Part 14-of--the Act. With the renewal application the sponsor shall be required to submit to the Department a list of all courses and programs offered in the past 2 years that year--which includes a description,

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- location, date and time the course was offered.
- 4) State agencies, colleges and universities shall submit a sponsor application in accordance with subsections (c)(2) and (3) above; however, they shall be exempt from payment of the fee in accordance with Section 130.65 of this Part 14-of-the-Act.

## 5) All courses and programs shall:

- A) Contain materials which contribute to the advancement, extension and enhancement of professional skills and knowledge in the practice of nursing home administration;
- B) Specify the course objectives, course content and teaching methods to be used;
- C) Be developed and presented by persons with education and/or experience in the subject matter of the program;
- D) Specify the number of CE hours that may be applied to fulfilling the Illinois CE requirements for license renewal; and
- E) Include some mechanism whereby participants evaluate the overall quality of the program.

- 6) An approved sponsor may subcontract with individuals and organizations to provide approved programs. All advertising, promotional materials and certificates of attendance must identify the licensed sponsor and the sponsor's license number. The presenter of the program may also be identified, but should be identified as a presenter. When a licensed sponsor subcontracts with a presenter, the licensed sponsor retains all responsibility for monitoring attendance, providing certificates of attendance and ensuring the program meets all of the criteria established by the Act and this Part, including the maintenance of records.

- 76) All programs given by sponsors shall be open to all licensed nursing home administrators and not be limited to the members of a single organization or group.

- 87) Certificate of Attendance or Participation. It shall be the responsibility of the sponsor to provide each participant in an approved program or course with a certificate of attendance or participation which shall contain the following information:

- A) The name and address of the sponsor;
- B) The name, address and license number of the participant;
- C) A brief statement of the subject matter;
- D) The number of clock hours actually attended in each program;
- E) The date and place of the program; and
- F) The signature of the sponsor.

- 99) The sponsor shall maintain course materials and attendance records containing all information in subsection (c)(76) above for not less than 5 years, except for the signature of the sponsor.

- 109) The sponsor shall be responsible for assuring that no renewal applicant shall receive CE credit for time not actually spent



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attending the program.

11+0) If a sponsor should fail to comply with any of the foregoing requirements, the Department, after notice to the sponsor and hearing before and recommendation by the Board, shall thereafter refuse to accept for CE credit attendance at or participation in any of such sponsor's CE activities until such time as the Department receives assurances of compliance with this Section.

12++) Notwithstanding any other provision of this Section, the Department or Board may evaluate any sponsor of any continuing education program at any time.

13++) The Department shall maintain a list of all approved continuing education sponsors.

d) Continuing Education Earned in Other Jurisdictions.

1) If a renewal applicant will be earning or has earned CE hours in another jurisdiction, but is not licensed in that jurisdiction and the course is not presented by an approved sponsor, the applicant shall submit an individual program approval request form, along with a \$20 processing fee, to have the program reviewed. The Board shall review and recommend approval or disapproval of the programs using the criteria set forth in subsection (c)(5) of this Section. Applicants may seek individual program approval prior to participation in the course or program. All individual program approval requests shall be submitted prior to the expiration date of the license.

2) If a licensee fails to submit an out of state CE approval form within the required time, late approval may be obtained by submitting the application with the \$20 processing fee plus a \$10 per hour late fee not to exceed \$150. The Board shall review and recommend approval or disapproval of this program using the criteria set forth in this Section.

e) Certification of Compliance with CE Requirements

1) Each renewal applicant shall certify, on the renewal application, to full compliance with the CE requirements set forth in subsection (a), above.

2) The Department may require additional documentation in order to demonstrate compliance with the CE requirements. It is the responsibility of each renewal applicant to retain or otherwise produce evidence of such compliance. Such additional documentation will be required in the context of the Department's random audit.

3) When there appears to be a lack of compliance with CE requirements, an applicant will be notified and may request an interview with the Board, at which time the Board may recommend that steps be taken to begin formal disciplinary proceedings as required by Section 10-65 of the Illinois Administrative Procedure Act [5 ILCS 100/10-65] (1117-Rev-Stat-19917-chr--1277 par--10167).

f) Restoration of Nonrenewed License. Upon evidence of compliance with

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CE requirements, the Department shall restore the license upon payment of the required fee.

g) Waiver of CE Requirements

1) Any renewal applicant seeking renewal of a license without having fully complied with these CE requirements shall file with the Department a renewal application, the required renewal fee, a statement setting forth the facts concerning such non-compliance, and a request for waiver of the CE requirements on the basis of these facts. If the Department, upon the written recommendation of the Board, finds from the applicant's affidavit or any other evidence submitted, that extreme hardship has been shown to substantiate the granting of a waiver, the Department shall waive enforcement of such requirements for the renewal period for which the applicant has applied.

2) If an interview with the Board is requested at the time the request for such waiver is filed with the Department, the renewal applicant shall be given at least 20 days written notice of the date, time and place of such interview by certified mail, return receipt requested.

3) Extreme hardship shall be determined on an individual basis by the Board and be defined as an inability to devote sufficient hours to fulfilling the CE requirements during the applicable pre-renewal period because of:

A) Full-time service in the armed forces of the United States of America during a substantial part of the pre-renewal period;

B) An incapacitating illness, documented by a currently licensed physician;

C) A physical inability to travel to the sites of approved programs documented by a currently licensed physician; or

D) Any other similar extenuating circumstances (i.e., family illness and prolonged hospitalization).

4) Any renewal applicant who, prior to the expiration date of his/her license, submits a request for a waiver, pursuant to the provisions of this Section shall be deemed to be in good standing until the Department's final decision on the application has been made.

(Source: Amended at 23 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

## Section 1310.100 Professional Conduct Standards

The Department may suspend or revoke a license, refuse to issue or renew a license or take other disciplinary action, based upon its finding of "unethical, unauthorized, or unprofessional conduct" within the meaning of Section 17 of the Act, which is interpreted to include, but is not limited to, the following acts or practices:



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- a) Practicing, condoning, facilitating or collaborating with any form of discrimination against any person or group on the basis of race, color, sex, sexual orientation, age, religion, national origin, marital status, political belief, mental or physical handicap, or any other preference or personal characteristic, condition or status.
- b) Engaging in the sexual exploitation of clients.
- c) Engaging in or condoning sexual harassment, which is defined as deliberate or repeated comments, gestures or physical contacts of a sexual nature.
- d) Failing to take appropriate steps to protect the privacy of a client and avoid unnecessary disclosures of confidential information.
- e) Performing, or pretending to be able to perform, professional services beyond one's scope of practice and one's competency.
- f) Submission of fraudulent claims for services to any person or entity including, but not limited to, health insurance companies or health service plans or third party payors.

(Source: Added at 23 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

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- 1) Heading of the Part: Child Support Enforcement
- 2) Code Citation: 89 Ill. Adm. Code 160
- 3) Section Numbers: Proposed Action:  
160.30 Amendment  
160.62 Repeal
- 4) Statutory Authority: Section 12-13 of the Illinois Public Aid Code [305 ILCS 5/12-13] and Public Law 104-193
- 5) Complete Description of the Subjects and Issues Involved: These proposed amendments to the Department's administrative rules concerning child support enforcement are consistent with changes in federal requirements for cooperation with the Title IV-D Child Support Enforcement Program pursuant to the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, Public Law 104-193 (PRWORA). Specifically, changes under PRWORA resulted in the repeal of federal regulations requiring that states provide applicants or recipients of cash assistance with the opportunity to attest to a lack of knowledge about an absent parent without affecting eligibility for assistance.

The proposed changes to Section 160.30 will standardize the cooperation policy by placing the same requirements upon all custodial parents within the program as are currently in place for custodial parents in contested administrative paternity cases under Section 160.62. The proposed amendments remove the opportunity for attestation of a lack of information about the non-custodial parent. The proposed amendments require the custodial parent to provide the name and social security number of the non-custodial parent, or the name and at least two other items of information, such as the non-custodial parent's date of birth and telephone number. Finally, the proposed amendments specify circumstances under which a custodial parent's failure to provide identifying information will not be determined to be non-cooperation. Section 160.62 on cooperation with the contested administrative paternity process is being proposed for repeal as its provisions are being folded into the proposed changes to Section 160.30. These changes to the Department's rules on cooperation with the child support enforcement program are consistent with changes to Section 454 of the Social Security Act [42 USC 654] and the repeal of federal regulations at 45 CFR 232.12.

These proposed amendments regarding cooperation are not expected to result in any budgetary changes.

- 6) Will these proposed amendments replace emergency amendments currently in effect? No
- 7) Does this rulemaking contain an automatic repeal date? No

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- 8) Do these proposed amendments contain incorporations by reference? No
- 9) Are there any other proposed amendments pending on this Part? Yes

Section Numbers	Proposed Action	Illinois Register Citation
160.10	Amendment	September 25, 1998 (22 Ill. Reg. 16966)
160.20	Amendment	September 25, 1998 (22 Ill. Reg. 16966)
160.60	Amendment	September 25, 1998 (22 Ill. Reg. 16966)
160.61	Amendment	September 25, 1998 (22 Ill. Reg. 16966)
160.65	Amendment	September 25, 1998 (22 Ill. Reg. 16966)
160.70	Amendment	September 25, 1998 (22 Ill. Reg. 16966)
160.75	Amendment	September 25, 1998 (22 Ill. Reg. 16966)
160.88	Amendment	September 25, 1998 (22 Ill. Reg. 16966)
160.110	Amendment	September 25, 1998 (22 Ill. Reg. 16966)
160.130	Amendment	September 25, 1998 (22 Ill. Reg. 16966)

- 10) Statement of Statewide Policy Objectives: These proposed amendments do not affect units of local government.

- 11) Time, Place, and Manner in Which Interested Persons May Comment on this Proposed Rulemaking: Any interested parties may submit comments, data, views, or arguments concerning this proposed rulemaking. All comments must be in writing and should be addressed to:

Joanne Jones  
Bureau of Rules and Regulations  
Illinois Department of Public Aid  
201 South Grand Ave. E., 3rd Floor  
Springfield, Illinois 62763  
(217) 524-0081

The Department requests the submission of written comments within 30 days after the publication of this notice. The Department will consider all written comments it receives during the first notice period as required by Section 5-40 of the Illinois Administrative Procedure Act [5 ILCS 100/5-40].

These proposed amendments may have an impact on small businesses, small municipalities, and not-for-profit corporations as defined in Sections 1-75, 1-80 and 1-85 of the Illinois Administrative Procedure Act [5 ILCS 100/1-75, 1-80, 1-85]. These entities may submit comments in writing to the Department at the above address in accordance with the regulatory flexibility provisions in Section 5-30 of the Illinois Administrative Procedure Act [5 ILCS 100/5-30]. These entities shall indicate their status as small businesses, small municipalities, or not-for-profit corporations as part of any written comments they submit to the Department.

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- 12) Initial Regulatory Flexibility Analysis:

- A) Types of small businesses, small municipalities and not for profit corporations affected: None
- B) Reporting, bookkeeping or other procedures required for compliance: None
- C) Types of professional skills necessary for compliance: None

- 13) Regulatory Agenda on Which this Rulemaking was Summarized: July 1998

The full text of the Proposed Amendments begins on the next page:

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## TITLE 89: SOCIAL SERVICES

## CHAPTER I: DEPARTMENT OF PUBLIC AID

## SUBCHAPTER f: COLLECTIONS

## PART 160

## CHILD SUPPORT ENFORCEMENT

## SUBPART A: GENERAL PROVISIONS

## Section

160.1 Incorporation By Reference

160.5 Definitions

160.10 Child Support Enforcement Program

160.12 Administrative Accountability Process

160.15 Application Processing Fee for IV-D Non-TANF Cases

160.20 Assignment of Rights to Support

160.25 Recoupment

## SUBPART B: COOPERATION WITH CHILD SUPPORT ENFORCEMENT

## Section

160.30 Cooperation With Support Enforcement Program

160.35 Good Cause for Failure to Cooperate with Support Enforcement

160.40 Proof of Good Cause For Failure to Cooperate With Support Enforcement

160.45 Suspension of Child Support Enforcement Upon Finding of Good Cause

## SUBPART C: ESTABLISHMENT AND MODIFICATION OF

## CHILD SUPPORT ORDERS

## Section

160.60 Establishment of Support Obligations

160.61 Uncontested and Contested Administrative Paternity and Support

Establishment

160.62 Cooperation with Paternity Establishment and Continued Eligibility

Demonstration Program (Repealed)

160.65 Modification of Support Obligations

## SUBPART D: ENFORCEMENT OF CHILD SUPPORT ORDERS

## Section

160.70 Enforcement of Support Orders

160.75 Withholding of Income to Secure Payment of Support

160.77 Certifying Past-Due Support Information or Failure to Comply with a

Subpoena or Warrant to State Licensing Agencies

160.80 Amnestty - 20% Charge

160.85 Diligent Efforts to Serve Process

## SUBPART E: EARMARKING CHILD SUPPORT PAYMENTS

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## Earmarking Child Support Payments

## SUBPART F: DISTRIBUTION OF SUPPORT COLLECTIONS

## Section

160.100

160.110 Distribution of Child Support for TANF Recipients

Continue to Receive Child Support Enforcement Services

Distribution of Child Support Collected While the Client Was an AFDC

or TANF Recipient, But Not Yet Distributed at the Time the AFDC or

TANF Case Is Cancelled

160.130 Distribution of Intercepted Income Tax Refunds and Other State

Payments

160.132 Distribution of Child Support for Non-TANF Clients

160.134 Distribution of Child Support for Interstate Cases

160.136 Distribution of Child Support Collected in IV-E Foster Care

Maintenance Cases

160.138 Distribution of Child Support for Medical Assistance No Grant Cases

## SUBPART G: STATEMENT OF CHILD SUPPORT ACCOUNT ACTIVITY

## Section

160.140

Statement of Child Support Account Activity

## SUBPART H: DEPARTMENT REVIEW OF DISTRIBUTION OF CHILD SUPPORT

## Section

160.150

Department Review of Distribution of Child Support for TANF

Recipients

160.160 Department Review of Distribution of Child Support for Former AFDC or

TANF Recipients

AUTHORITY: Implementing and authorized by Sections 4-1.7, Art. X, 12-4.3 and

12-13 of the Illinois Public Aid Code [305 ILCS 5/4-1.7, Art. X, 12-4.3 and

12-13].

SOURCE: Recodified from 89 Ill. Adm. Code 112.78 through 112.86 and 112.88 at

10 Ill. Reg. 11928; amended at 10 Ill. Reg. 19990, effective November 14, 1986;

emergency amendment at 11 Ill. Reg. 4800, effective March 5, 1987, for a

maximum of 150 days; amended at 11 Ill. Reg. 9129, effective April 30, 1987;

amended at 11 Ill. Reg. 15208, effective August 31, 1987; emergency amendment

at 11 Ill. Reg. 1563, effective December 31, 1987, for a maximum of 150 days;

amended at 12 Ill. Reg. 9065, effective May 16, 1988; amended at 12 Ill. Reg.

18185, effective November 4, 1988; emergency amendment at 12 Ill. Reg. 20835,

effective December 2, 1988, for a maximum of 150 days; amended at 12 Ill. Reg.

22278, effective January 1, 1989; amended at 13 Ill. Reg. 4268, effective March

21, 1989; amended at 13 Ill. Reg. 7761, effective May 22, 1989; amended at 13



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Ill. Reg. 14385, effective September 1, 1989; amended at 13 Ill. Reg. 16768, effective October 12, 1989; amended at 14 Ill. Reg. 18759, effective November 9, 1990; amended at 15 Ill. Reg. 1034, effective January 21, 1991; amended at 16 Ill. Reg. 1852, effective January 20, 1992; amended at 16 Ill. Reg. 9997, effective June 15, 1992; amended at 17 Ill. Reg. 2272, effective February 11, 1993; amended at 17 Ill. Reg. 18844, effective October 18, 1993; amended at 18 Ill. Reg. 697, effective January 10, 1994; amended at 18 Ill. Reg. 12052, effective July 25, 1994; amended at 18 Ill. Reg. 15083, effective September 23, 1994; amended at 18 Ill. Reg. 17886, effective November 30, 1994; amended at 19 Ill. Reg. 1314, effective January 30, 1995; amended at 19 Ill. Reg. 8298, effective June 15, 1995; amended at 19 Ill. Reg. 12675, effective August 31, 1995; emergency amendment at 19 Ill. Reg. 15492, effective October 30, 1995, for a maximum of 150 days; amended at 20 Ill. Reg. 1195, effective January 5, 1996; amended at 20 Ill. Reg. 5659, effective March 28, 1996; emergency amendment at 20 Ill. Reg. 14002, effective October 15, 1996, for a maximum of 150 days; amended at 21 Ill. Reg. 1189, effective January 10, 1997; amended at 21 Ill. Reg. 3922, effective March 13, 1997; emergency amendment at 21 Ill. Reg. 8594, effective July 1, 1997, for a maximum of 150 days; emergency amendment at 21 Ill. Reg. 9220, effective July 1, 1997, for a maximum of 150 days; amended at 21 Ill. Reg. 12197, effective August 22, 1997; amended at 21 Ill. Reg. 16050, effective November 26, 1997; amended at 22 Ill. Reg. 14895, effective August 1, 1998; emergency amendment at 22 Ill. Reg. 17046, effective September 10, 1998, for a maximum of 150 days; amended at 23 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_.

## SUBPART B: COOPERATION WITH CHILD SUPPORT ENFORCEMENT

## Section 160.30 Cooperation With Support Enforcement Program

- a) As a condition of eligibility, unless the Department determines there is good cause for refusing, a caretaker relative (see 89 Ill. Adm. Code 101.20 for definition of "caretaker relative") must cooperate with the Department in:
  - 1) identifying and locating the responsible relative of a child for whom aid is claimed;
  - 2) establishing the paternity of a child for whom aid is claimed;
  - 3) obtaining support from the responsible relative; and
  - 4) enforcing support obligations.
- b) If the caretaker relative and his or her spouse are in the home and are included in the assistance grant, both must comply with the cooperation requirements. A caretaker relative who fails or refuses, without good cause (see Sections 160.35 through 160.45), to cooperate in the enforcement of support obligations shall be ineligible for medical assistance for himself or herself. If a caretaker states, without good cause, a refusal to cooperate with child support enforcement requirements, the family is not eligible for cash benefits. A caretaker who fails to cooperate, without valid reason, is subject to the following provisions:

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- 1) For the first instance of non-cooperation, the cash assistance payment will be reduced by 50 percent of the family's payment level until the cooperation requirement is met. If the cooperation requirement is not met after three months of reduced payments, the entire cash payment will be stopped.
- 2) For the second instance of non-cooperation, the cash assistance payment will be reduced by 50 percent of the family's payment level for three months. If the cooperation requirement is not met after three months of reduced payments, the entire cash payment will be stopped.
- 3) For the third (or more) instance of non-cooperation, the family's entire cash assistance payment will be stopped for at least three months. Cash assistance will be reinstated for the fourth month if the cooperation requirement is met during the three-month sanction period.
- 4) Sanction penalties accumulate during any single period of continuous assistance. A loss of all cash assistance due to a sanction shall not be considered a break in assistance. If a family member's non-cooperation occurs during a sanction period which was the result of another member's non-cooperation, the next progressive sanction penalty shall apply.
- 5) No sanction will be imposed until staff have a reconciliation meeting to determine whether the client had valid reason for failing to comply with requirements and the client has either failed to attend the meeting or failed to show valid reason. If the client fails to show valid reason, the reconciliation process will continue to enable resolution of disputes. Failure of the client to appear for a scheduled meeting is not considered an instance of non-cooperation.
- 6) The Department shall establish a reconciliation procedure to assist in resolving disputes related to any aspect of cooperation. Through the reconciliation process, the Department will have a mechanism to identify good cause and valid reason, ensure that the client is aware of the issue and enable the client to perform the required activity without facing sanction.
- c) "Cooperating with the Department" in the context of subsection (a) of this Section means any of the following actions that are relevant to, or necessary for, the achievement of the objectives specified in subsection (a) of this Section:
  - 1) appearing at such places as an office of the Department or the Department's legal representative (such as the Attorney General or his designee), as necessary, to provide verbal or written information, or documentary evidence, known to, possessed by, or reasonably obtainable by the caretaker relative;
  - 2) appearing and testifying as a witness at judicial or administrative proceedings;
  - 3) paying to the Department any child support payments received from the responsible relative; and

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- 4) providing information, ~~or attesting to the lack of information,~~ under penalty of perjury (for the penalty for perjury, see Section 32-2 of the Criminal Code [720 ILCS 5/32-2]).
- d) Each caretaker relative, when notified of this requirement, must furnish to the Department a written statement, under penalty of perjury, setting forth the following verifiable information about the alleged father or non-custodial parent, or, if more than one person is an alleged father or non-custodial parent, about each such person:
- 1) the name and social security number of the non-custodial parent or alleged father; or
  - 2) the name of the non-custodial parent or alleged father and at least two of the following items of identifying information related to the non-custodial parent or alleged father:
    - A) date of birth;
    - B) address;
    - C) telephone number;
    - D) name and address of past or present employer;
    - E) name and address of union or trade association;
    - F) past or present school attended;
    - G) names and addresses of parents;
    - H) names and addresses of other relatives or friends;
    - I) the manufacturer's model and license number of any motor vehicle owned by the alleged father or non-custodial parent;
    - J) other verifiable information concerning the alleged father or non-custodial parent, such as information about military service, involvement with the criminal justice or penal systems, receipt of public assistance or unemployment insurance benefits or the existence of professional, occupational or recreational licenses.
- e) The failure of a custodial parent of a non-marital child to provide sufficient identifying information about the alleged father, as required under subsection (d) of this Section, shall not be determined to be non-cooperation if:
- 1) the custodial parent:
    - A) has had an assistance grant that includes a non-marital child for at least ten years prior to the notification provided to the custodial parent under subsection (d) of this Section, and the custodial parent furnishes to the Department a written statement, under penalty of perjury, indicating that she does not know the identifying information about the alleged father because she has had no contact with him since the non-marital child was included in the assistance grant; or
    - B) does not know the required information because:
      - 1) the custodial parent is developmentally disabled, as documented by a copy of an intelligence quotient test result, or the written statement of a qualified medical practitioner; or

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- ii) the custodial parent is mentally ill, or was mentally ill at the time the non-marital child was conceived, as documented by the written statement of a qualified medical practitioner stating that the nature of the mental illness prevented the person from knowing the required information; or
  - iii) the custodial parent has a history of drug or alcohol abuse, and provides documentation of treatment for such abuse taken at the time the non-marital child was conceived; and
- 2) the custodial parent provides whatever identifying information she does possess about the alleged father.
- f) The failure of a caretaker relative of the second degree or greater to a child to provide sufficient identifying information about the non-custodial parent or alleged father, as required under subsection (d) of this Section, shall not be determined to be non-cooperation if:
- 1) the caretaker relative does not know the required information; and
  - 2) the caretaker relative provides whatever identifying information she does possess about the non-custodial parent or alleged father.
- g) All caretaker relatives must sign a statement certifying attesting that:
- 1) A) he or she has, to the best of his or her ability, provided all information requested of him or her; and
  - 2) B) all information which he or she has provided is true and correct, to the best of his or her knowledge.
- h) A) Grounds for a determination that a caretaker relative has failed or refused to cooperate with the requirements of subsection (c) of this Section are as follows:
- 1) Failure or Refusal to Cooperate
    - A) A) failure or refusal, without a valid reason, to appear for an appointment or interview at such places as the Department's or the Department's legal representative's office;
    - B) B) failure or refusal, without a valid reason, to appear and testify as a witness at a judicial or administrative proceeding;
    - C) C) failure or refusal, without a valid reason, to submit to a court or administratively-ordered genetic test; or
    - D) D) failure or refusal during an appointment or interview to provide information and certify attest under penalty of perjury as specified under subsections (c)(4) and (d) of this Section. that:
  - A) he or she has provided all verbal or written information or documentary evidence known to be possessed by or reasonably obtainable by him or her about the identity and location of the responsible relative; and



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- B) the information provided is true and correct, to the best of his or her knowledge.

2) 5) A caretaker relative may claim a valid reason for failure or refusal to appear for an appointment or interview, to appear and testify as a witness at a judicial or administrative proceeding or to submit to a court or administratively-ordered genetic test.

- A) Examples of valid reasons for failure or refusal to cooperate include, but are not limited to:

- i) illness;
- ii) incapacity (for example, a broken leg, information of a scheduled surgery or recuperation from surgery);
- iii) death in the family;
- iv) non-Child Support Enforcement court-required appearance;
- v) temporary incarceration;
- vi) family crisis;
- vii) breakdown in child care arrangements;
- viii) sudden or unexpected emergency;
- ix) unavailability of otherwise suitable child care;
- x) breakdown in transportation arrangements or lack of reasonably available transportation; or
- xi) non-receipt of notice of appointment or interview, court date or genetic test date.

- B) The Department will not require a caretaker relative to provide proof of a valid reason for failure or refusal to cooperate unless:

- i) the caretaker relative has failed or refused to appear for an appointment or interview, judicial or administrative proceeding or genetic test on at least one other occasion within a 30-day period from the first failure to appear; or
- ii) evidence, independent of the explanation of valid reason, contradicts the caretaker relative's explanation.

- C) When the Department requests proof of a valid reason, the caretaker relative must provide such proof (for example, physician's statement, dated pharmacy statement, hospital admission statement, statements by witnesses) within ten calendar days after the request. The Department shall allow an additional ten calendar days to provide proof at the request of the caretaker relative. If the caretaker relative does not provide the proof, the Department shall reject the claim of a valid reason.

- D) The sanction for failure or refusal to appear for an appointment or interview, judicial or administrative proceeding or genetic test shall be rescinded at any level of the appeal process up through and until the final agency decision and any lost benefits will be restored, if the

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caretaker relative establishes a valid reason for his or her failure or refusal.

- 1) If a caretaker relative, who is subject to the penalty at subsection (b) of this Section because of a failure or refusal to cooperate indicates that he or she is willing to cooperate within the three-month penalty period, he or she will be given the opportunity to cooperate. The caretaker relative will be determined to have cooperated if he or she complies with the requirements that he or she previously failed or refused to meet as follows:

- 1) In the case of a caretaker relative for whom a sanction was imposed for missing an interview or appointment, he or she may demonstrate cooperation by appearing at a new interview or appointment. If the caretaker relative notifies the Department that he or she is willing to cooperate, the Department will schedule a new interview or appointment no later than three weeks from the date of such notification. If the caretaker relative appears at the new interview or appointment, the Department will authorize assistance as of the date the caretaker relative notified the Department that he or she was willing to cooperate if this is the first penalty, or as of the first day of the fourth month if it is the second or third penalty.

- 2) In the case of a caretaker relative for whom a sanction was imposed for failure to submit to a genetic test to establish paternity, he or she may demonstrate cooperation by submitting to the genetic test. If the caretaker relative notifies the Department that he or she is willing to cooperate, the Department will schedule a genetic test within three weeks from the date of such notification. If the caretaker relative submits to the genetic test, the Department will authorize assistance as of the date the caretaker relative notified the Department that he or she was willing to cooperate if this is the first penalty, or as of the first day of the fourth month if it is the second or third penalty.

- 3) In the case of a caretaker relative for whom a sanction was imposed for not attending a court or administrative appearance, he or she may demonstrate cooperation by attending the next court or administrative appearance or, once in a court or administrative case after 30 days have passed since the missed appearance, by signing a statement that he or she is now willing to cooperate and will attend the next scheduled court or administrative appearance. Assistance for the caretaker relative shall be authorized as of the date he or she demonstrates cooperation by either method if this is the first penalty, or as of the first day of the fourth month if it is the second or third penalty.

- 4) In the case of a caretaker relative for whom a sanction was imposed for failure to attend a court or administrative appearance or other failure to cooperate resulted in the



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dismissal of the court or administrative case, he or she may demonstrate cooperation by doing what he or she failed to do or, once in a court or administrative case after 60 days have passed without the dismissal, by signing a statement that he or she is now willing to cooperate. Assistance for the caretaker relative shall be authorized as of the date he or she demonstrates cooperation by either method if this is the first penalty, or as of the first day of the fourth month if it is the second or third penalty.

5) In the case of a caretaker relative for whom a sanction was imposed for not providing information and certifying under penalty of perjury attesting, he or she may demonstrate cooperation by providing the information and executing the certification attestation described in subsection (h)(1)(D) of this Section. Assistance for the caretaker relative shall be authorized as of the date he or she provides the information and executes the certification attestation if this is the first penalty, or as of the first day of the fourth month if it is the second or third penalty.

6) The Department shall not deny or terminate a pregnant caretaker relative's medical assistance because of the caretaker relative's failure to cooperate with the requirements of subsection (c) of this Section until at least 30 days have elapsed since termination of the pregnancy.

1) A sanction for failure or refusal to comply with the requirements of subsection (c) of this Section shall be rescinded at any level of the appeal process up through and including the final agency decision and any lost benefits will be restored, if the caretaker relative establishes good cause for failure or refusal.

2) Sanctions under this Section, employment and training programs and the Responsibility and Services Plan (89 Ill. Adm. Code 112.79), and the School Attendance Initiative (89 Ill. Adm. Code 112.68(c)) shall be considered along one track. After a sanction is taken under one Section, a subsequent sanction under that Section or either of the other two Sections will be at the next sanction level, as described in subsections Section-160-30(b)(1), (2) and (3) of this Section.

(Source: Amended at 23 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

### Section 160.62 Cooperation with Paternity Establishment and Continued Eligibility Demonstration Program (Repealed)

a) Unless the Department determines there is good cause for failure to cooperate (see Sections 160-35 through 160-45), a custodial parent of a non-marital child in a case assigned to either the experimental or the non-experimental treatment group in the Paternity Establishment and Continued Eligibility Demonstration Program under subsection (c)

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of Section 160-61 must cooperate with the Department's efforts to establish the child's paternity, as required under this Section. If the alleged father is in the home with the custodial parent and included in the assistance unit, both parents must comply with the cooperation requirements.

b) The provisions of Section 160-30, on cooperation with the support enforcement program, shall apply to the cases described in subsection (a) of this Section unless otherwise provided in this Section.

c) A custodial parent in a case described in subsection (a) of this Section cannot attest to lack of information under subsection (e) of Section 160-30, but must furnish to the Department at the time of the notification required under subsection (d) of this Section a written statement under penalty of perjury, setting forth the following verifiable information about the alleged father or, if more than one person is an alleged father, about each such person:

1) the name and social security number of the alleged father or

2) the name of the alleged father and at least two of the following items of identifying information related to the alleged father:

A) date of birth;

B) address;

C) telephone number;

D) name and address of past or present employer;

E) name and address of union or trade association;

F) past or present school attended;

G) names and address of parents;

H) names and addresses of other relatives or friends;

I) the manufacturer's model and license number of any motor vehicle owned by the alleged father;

J) other verifiable information concerning the alleged father such as information about military service, involvement with the criminal justice or penal systems, receipt of public assistance or unemployment insurance benefits or the existence of professional, occupational or recreational licenses.

d) All custodial parents in the cases described in subsection (a) of this Section shall be notified in writing of the cooperation requirements and sanctions for failure to comply with those requirements under this Section during intake when adding a non-marital child to their grant (including cases where the new child is subject to the family cap under 89 Ill. Adm. Code 112 and 170) or for existing cases with a non-marital child at any time beginning with the effective date of this Section.

e) The failure of a custodial parent to provide sufficient identifying information about the alleged father, as required under subsection (e) of this Section, shall not be determined to be non-cooperation if:

1) the custodial parent has had an assistance grant that includes the non-marital child for at least 10 years prior to the notification provided to the custodial parent under subsection

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- 1) Heading of the Part: Specialized Health Care Delivery Systems
- 2) Code Citation: 89 Ill. Adm. Code 146
- 3) Section Numbers:  
146.205 Amendment  
146.210 Amendment  
146.215 Amendment  
146.220 Amendment  
146.225 Amendment  
146.230 Amendment  
146.235 Amendment  
146.255 Amendment  
146.290 New Section
- 4) Statutory Authority: Section 12-13 of the Illinois Public Aid Code [305 ILCS 5/12-13] and Public Act 90-776 [225 ILCS 46]

5) Complete Description of the Subjects and Issues Involved: These proposed amendments to the Department's rules concerning supportive living facilities (SLFs) provide a number of changes and clarifications to the current program requirements. The changes are the result of continuing discussions between Department staff, nationally recognized experts on assisted living environments and SLF contractors. Several of the changes provide for updating and clarifications while other changes serve to allow for less restrictive requirements. The proposed amendments include the following revisions:

- Addition of a definition for "rehabilitated nursing facility";
- Updating building code requirements concerning building construction and changes in participation requirements relating to architectural plans and the review of same;
- Reduced specificity regarding refrigerator/freezer requirements, elimination of certain requirements for bathroom construction and fixtures, and reduced requirements concerning closet spaces;
- Changes concerning SLF certification renewal, clarifications on the screening procedures for resident participation and clarifications concerning discharge criteria and procedures;
- Clarifications on the delivery of personal care services;
- Changes in the definition of dietitian that coincide with revisions of the Department of Public Health's definition;
- Addition of provisions regarding requirements on criminal history

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- {d}-of--this--Section--and--the--custodial--parent--furnishes--to--the  
Department--a--written--statement--under--penalty--of--perjury,  
indicating--that--she--does--not--know--the--identifying--information  
about--the--alleged--father--because--she--has--had--no--contact--with--him  
since--the--non-marital--child--was--included--in--the--assistance--grant;  
or  
2) the--custodial--parent--does--not--know--the--required--information  
because:  
A) the--custodial--parent--is--developmentally--disabled,--as  
documented--by--a--copy--of--an--intelligence--quotient--test  
result--or--the--written--statement--of--a--qualified--medical  
practitioner;--or  
B) the--custodial--parent--is--mentally--ill--or--was--mentally--ill--at  
the--time--the--non-marital--child--was--conceived;--as--documented  
by--the--written--statement--of--a--qualified--medical--practitioner  
stating--that--the--nature--of--the--mental--illness--prevented--the  
person--from--knowing--the--required--information;--or  
C) the--custodial--parent--has--a--history--of--drug--or--alcohol--abuse  
and--provides--documentation--of--treatment--for--such--abuse--taken  
at--the--time--the--non-marital--child--was--conceived;--and  
3) the--custodial--parent--provides--whatever--identifying--information  
she--does--possess--about--the--alleged--father;  
F) All--applicants--and--recipients--subject--to--the--provisions--of--this  
Section--shall--have--the--same--appeal--rights,--including--the--right--to--a  
fair--hearing--as--any--other--applicant--or--recipient--notified--of--an  
adverse--action;

(Source: Repealed at 23 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

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background checks for all certified nursing assistants in conformance with the Health Care Worker Background Check Act [225 ILCS 46];

Changes concerning reimbursement for the care of Medicaid residents establishing separate rate calculation methodologies that are specific to freestanding SLFs and rehabilitated nursing facilities; and

Addition of a new Section defining geographic areas that are used in rate setting procedures for SLFs.

These proposed amendments are not expected to result in any additional expenditures by the Department.

6) Will these proposed amendments replace emergency amendments currently in effect? No

7) Does this rulemaking contain an automatic repeal date? No

8) Do these proposed amendments contain incorporations by reference? No

9) Are there any other proposed amendments pending on this Part? No

10) Statement of Statewide Policy Objectives: These proposed amendments do not affect units of local government.

11) Time, Place, and Manner in Which Interested Persons May Comment on this Proposed Rulemaking: Any interested parties may submit comments, data, views, or arguments concerning this proposed rulemaking. All comments must be in writing and should be addressed to:

Joanne Jones  
Bureau of Rules and Regulations  
Illinois Department of Public Aid  
201 South Grand Ave. E., 3rd Floor  
Springfield, Illinois 62763  
(217) 524-0081

The Department requests the submission of written comments within 30 days after the publication of this notice. The Department will consider all written comments it receives during the first notice period as required by Section 5-40 of the Illinois Administrative Procedure Act [5 ILCS 100/5-40].

These proposed amendments may have an impact on small businesses, small municipalities, and not-for-profit corporations as defined in Sections 1-75, 1-80 and 1-85 of the Illinois Administrative Procedure Act [5 ILCS 100/1-75, 1-80, 1-85]. These entities may submit comments in writing to the Department at the above address in accordance with the regulatory

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flexibility provisions in Section 5-30 of the Illinois Administrative Procedure Act [5 ILCS 100/5-30]. These entities shall indicate their status as small businesses, small municipalities, or not-for-profit corporations as part of any written comments they submit to the Department.

12) Initial Regulatory Flexibility Analysis:

A) Types of small businesses, small municipalities and not for profit corporations affected: Supportive Living Facilities

B) Reporting, bookkeeping or other procedures required for compliance:  
None

C) Types of professional skills necessary for compliance: None

13) Regulatory Agenda on which this rulemaking was summarized: July 1998

The full text of the Proposed Amendments begins on the next page:



DEPARTMENT OF PUBLIC AID

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TITLE 89: SOCIAL SERVICES

CHAPTER I: DEPARTMENT OF PUBLIC AID

SUBCHAPTER d: MEDICAL PROGRAMS

PART 146

SPECIALIZED HEALTH CARE DELIVERY SYSTEMS

SUBPART A: AMBULATORY SURGICAL TREATMENT CENTERS

Section	
146.100	General Description
146.105	Definitions
146.110	Participation Requirements
146.115	Records and Data Reporting Requirements
146.125	Covered Ambulatory Surgical Treatment Center Services
146.130	Reimbursement for Services

SUBPART B: SUPPORTIVE LIVING FACILITIES

146.200	General Description
146.205	Definitions
146.210	Structural Requirements
146.215	SLF Participation Requirements
146.220	Resident Participation Requirements
146.225	Reimbursement for Medicaid Residents
146.230	Services
146.235	Staffing
146.240	Resident Contract
146.245	Assessment and Service Plan and Quarterly Evaluation
146.250	Resident Rights
146.255	Discharge Criteria
146.260	Grievance Procedure
146.265	Records Requirements
146.270	Quality Assurance Plan
146.275	Monitoring
146.280	Termination or Suspension of SLF Provider Agreement
146.285	Voluntary Surrender of Certification
146.290	Geographic Areas

AUTHORITY: Implementing Article III of the Illinois Health Finance Reform Act [20 ILCS 2215/Art. III] and implementing and authorized by Articles III, IV, V, VI and Section 12-13 of the Illinois Public Aid Code [305 ILCS 5/Arts. III, IV, V, VI and 12-13].

SOURCE: Old Part repealed at 14 Ill. Reg. 13800, effective August 15, 1990; New Part adopted at 20 Ill. Reg. 4419, effective February 29, 1996; emergency amendment at 21 Ill. Reg. 13875, effective October 1, 1997, for a maximum of 150 days; amended at 22 Ill. Reg. 4430, effective February 27, 1998; emergency

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amendment at 22 Ill. Reg. 13146, effective July 1, 1998, for a maximum of 150 days; amended at 22 Ill. Reg. 19914, effective October 30, 1998; amended at 23 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_.

SUBPART B: SUPPORTIVE LIVING FACILITIES

Section 146.205 Definitions

For purposes of this Part, the following terms shall be defined as follows:

"Activities of Daily Living" means eating, bathing, dressing, transferring, toileting, walking and grooming.

"Assessment" means either the federally mandated assessment instrument commonly referred to as minimum data set (MDS) or the Department designated resident assessment instrument designed for use in SLFs.

"Bank Nursing Facility Beds" means SLF providers that choose to participate by converting a distinct part of a nursing facility shall be allowed to retain the Certificate of Need for nursing beds that were converted.

"Complaint" means a phone call, letter or personal contact to the Department from a resident, family member or resident representative expressing a concern related to the health, safety or well-being of one or more SLF residents.

"Contract" means the written agreement between an SLF and the Department to provide all services set forth in this Subpart B.

"Department" means the Illinois Department of Public Aid.

"Direct Care Staff" means staff which provide assistance with activities of daily living or other personal needs or maintenance, or general supervision and oversight of the physical and mental well-being of an individual.

"Distinct Part" means a separate building or an entire wing or other physically identifiable space of an existing facility licensed under the Nursing Home Care Act or the Hospital Licensing Act that is operated distinguishably from the rest of the facility. The distinct part of a nursing facility will not be subject to provisions of the Nursing Home Care Act. The distinct part of a hospital continues to be subject to provisions of the Hospital Licensing Act while complying with provisions of this Subpart B. A distinct part does not include the conversion of an entire nursing facility or hospital.

"Follow-up Care" means the response to, and documentation of, the

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service plan which is discussed with, and agreed to by, the resident. It may include physician referrals, revision of the service plan to incorporate nursing services, health promotion counseling and teaching self care in meeting health needs.

"Freestanding Facility" means a separate building that is not part of an existing nursing facility or hospital. Freestanding facilities include conversion of an entire nursing facility or hospital.

"Licensed Nurse" means a person whose services are paid for by the SLF and who is licensed as a registered nurse, registered professional nurse, practical nurse or licensed practical nurse under the Illinois Nursing Act of 1987 [225 ILCS 65].

"Medicaid" means the Department's Medical Assistance Program.

"Medicaid Resident" means a person with a disability (as determined by the Social Security Administration) age 22 years and over, or a person who is age 65 years and over who has been determined eligible for Medicaid payment for SLF services. Eligibility for a person residing in an SLF shall be determined in accordance with 89 Ill. Adm. Code 120.10 and 120.61 (excluding subsection (f) of Section 120.61). Provisions for property transfers as described at 89 Ill. Adm. Code 120.387 shall apply to a person residing in an SLF. Provisions for the prevention of spousal impoverishment as described at 89 Ill. Adm. Code 120.379 shall apply to a person residing in an SLF.

"Medical Assistance Program" means the program administered under Article V of the Illinois Public Aid Code [305 ILCS 5/Art. V] or successor programs and Title XIX of the Social Security Act (42 USC 8-9-e- 1396) and related federal and State rules and regulations.

"Rehabilitated Nursing Facility" means the conversion of a distinct part of an existing nursing facility.

"Related Parties" means affiliates of the SLF; entities for which investments are accounted for by the equity method by the entire enterprise; trusts for the benefit of employees, such as pensions and profit-sharing trusts that are managed by or under the trusteeship of management; any general partner; management of the SLF; members of the immediate families of principal owners of the SLF or its management; and other parties with which the SLF may deal if one party controls or can significantly influence management or operating policies of the other to an extent that one of the transacting parties might be prevented from fully pursuing its own separate interests. An entity or person shall be deemed by the Department to be a related party if it can significantly influence management or operating policies of the transacting parties or if it has an ownership interest in one of the

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transacting parties and can significantly influence the other to an extent that one or more of the transacting parties might be prevented from fully pursuing its own separate interests.

"Resident" means a person living in an SLF, including Medicaid residents as defined in this Section, as well as individuals who are not eligible for Medicaid payment for SLF services.

"RFP" means a Request for Proposal.

"Room and Board" means the housing and meals provided under the resident contract.

"Services" means the personal and health care related services provided by the SLF pursuant to Section 146.230.

"Service Plan" means the written plan that is developed by a licensed nurse with input from the resident, or his or her designated representative, based upon the assessment and shall be completed within seven days after completion of the assessment.

"SLF or Supportive Living Facility" means a residential setting in Illinois that: provides or coordinates flexible personal care services, 24 hour supervision and assistance (scheduled and unscheduled), activities, and health related services with a service program and physical environment designed to minimize the need for residents to move within or from the setting to accommodate changing needs and preferences; has an organizational mission, service programs and a physical environment designed to maximize residents' dignity, autonomy, privacy and independence; and encourages family and community involvement.

"SSI" means Supplemental Security Income under Title XVI of the Social Security Act.

"Subcontractor" means any person who assumes any duties and responsibilities from the SLF under this contract for the performance of an act for which the SLF has contracted with the Department.

(Source: Amended at 23 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

## Section 146.210 Structural Requirements

a) Building Construction

1) The SLF's architectural plans shall conform to the current State building codes for the respective building type, local Fire and Life Safety Standards for health care occupancy or the 1997

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National Fire Protection Association Life Safety Code (NFPA) 101, Chapter 22, Residential Board and Care Occupancies or local building codes if more stringent. Each SLP shall be in compliance with local building codes and the rules of the State Fire Marshal (425-1565-25) if applicable.

2) Each SLP shall meet accessibility standards as related to the Americans with Disabilities Act of 1990.

3) An SLP shall not have any apartments below grade level.

4) All freestanding sites consisting of two or more stories with 75 or fewer units shall have a minimum of one elevator available for resident use. All freestanding sites consisting of two or more stories with 76 or more units shall have a minimum of two elevators available for resident use.

## b) Heating and Air Conditioning

1) All residential apartments shall have individually controlled systems to maintain comfortable temperatures.

2) Buildings shall provide a heating and air conditioning system in public areas to maintain comfortable temperatures.

## c) Illumination

Illumination systems shall be installed and maintained to ensure sufficient lighting for general lighting, reading, night lighting for corridors, stairwells and emergency situations. There shall be adequate illumination for outdoor areas.

## d) Resident Apartments General Requirements - Freestanding Sites

1) Each SLP apartment shall have at least 300 950 square feet of living space, including closets and the bathroom, for a person living alone. Individuals wishing to share an apartment shall have no less than 450 500 square feet of living space, including closets and the bathroom.

2) Each apartment shall be equipped at a minimum with:

- A) A door that locks from the inside;
- B) A full bathroom as defined in this Section;
- C) An emergency call system pursuant to Section 146.230(n);
- D) Heating and cooling controls;
- E) An individual mailbox which shall be located inside the building;

F) Wiring for private telephone lines;

G) Access to cable television or satellite dish; and

H) A sink, microwave oven or stove, and refrigerator with a separate freezer compartment capacity of not less than 14 cubic feet, including freezer capacity of not less than three cubic feet.

3) Each SLP shall have a master key to each apartment to be used only in case of an emergency.

4) Each freestanding SLP shall consist of one building housing at least ten but no more than 150 apartments.

## e) Resident Apartments General Requirements - Rehabilitated Nursing Facilities

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1) Any nursing facility rehabilitating a portion of the facility to conform with SLP requirements shall convert a distinct part of existing facility space. Each SLP apartment shall have at least 160 square feet of living space, including closets and the bathroom, for a person living alone. Individuals wishing to share an apartment shall not have less than 320 square feet of living space, including closets and the bathroom.

2) Each apartment shall be equipped at a minimum with:

- A) A door that locks from the inside;
- B) A full bathroom as defined in this Section that may be between and shared by the adjoining apartment;
- C) An emergency call system pursuant to Section 146.230(n);
- D) Heating and cooling controls;
- E) An individual mailbox which shall be located inside the building;
- F) Wiring for private telephone lines;
- G) Access to cable television or satellite dish; and
- H) A sink, microwave oven or stove, and refrigerator with a separate freezer compartment capacity of not less than 14 cubic feet, including freezer capacity of not less than three cubic feet.

3) Each SLP shall have a master key to each apartment to be used only in case of an emergency.

4) Each rehabilitated nursing facility shall consist of a distinct part of an existing facility housing at least ten apartments but no more than 150 apartments.

## f) Apartment Bathrooms

1) Each bathroom shall be equipped with:

- A) A toilet with surrounding grab bars;
- B) A sink;
- C) A bathtub and/or shower stall with surrounding grab bars;
- D) Hot and cold running water with faucets that meet all marking standards for residential building codes; and

E) An emergency call system pursuant to Section 146.230(n).

2) At least ten percent of all apartment bathrooms shall be wheelchair accessible to allow a five-foot turning radius or utilize American National Standards Institute P-shape or Y-shape including a roll-in shower with non-skid surfaces with hand-held shower heads and grab bars.

3) At least 50 percent (separate from the ten percent noted in subsection (f)(2)) of this Section of all apartment bathrooms shall be equipped with only a shower stall with non-skid surfaces, hand-held shower heads and grab bars.

2) Each bathroom shall be a separate room and shall be designed to provide privacy.

5) Wall construction in bathrooms shall have proper and appropriate blocking to allow installation of grab bars near toilets and in the shower.



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3164 The SLF shall have at least one common bathing room which contains a bathtub and a roll-in shower which is wheelchair accessible to allow a five foot turning radius or utilize the American National Standards Institute T-shape or Y-shape, both of which have a non-skid surface, transfer seat and grab bars. Each bathing room shall have door locks to ensure privacy.

- g) Closet Space  
Each apartment shall have minimum closet space of 90 cubic feet, or minimum with floor dimensions of no less than 72 inches wide and 30 inches deep. Each closet shall be equipped with a door.

## h) Doors

- 1) All doors in residential apartments, including entrance doors, shall be wheelchair accessible.
- 2) Entrance doors to apartments shall have locking devices that are accessible to the outside.
- 3) Entrance doors to residential apartments shall open onto a public corridor.
- 4) Entrance doors to each apartment shall be equipped with an "eye-view".

## i) Windows

All apartment windows shall be of clear glass (except bathrooms) and large enough to permit viewing to the outside. Apartments shall have at least one window with a sill height that permits viewing from a seated position.

## j) Common Areas

- 1) The SLF shall have a minimum of two common areas that provide residents with space for socialization. The dining room may be used as one of the common areas.
- 2) All common areas shall be accessible for wheelchair use and shall be designed and furnished to meet resident needs.
- 3) Common areas shall be available for resident use at any time, provided such use does not disturb the health, safety, and well-being of other residents. Access to private or public outdoor recreation areas shall be available to all residents.
- 4) Each common area shall be equipped with an emergency call system pursuant to Section 146.230(n).

## k) Public Restrooms

- 1) There shall be at least one public restroom that is handicapped accessible.
- 2) All public restrooms shall be clean.
- 3) All public restrooms shall contain toilet tissue, waste receptacles and hand drying means that cannot be reused. Soap shall be provided in a manner that minimizes contamination.

## l) Public Telephone

There shall be an accessible pay telephone in a common area that allows residents and others to conduct private conversations.

## m) Social and Recreational Areas

- 1) Accessible public areas shall be provided for residents' social

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- 2) Social and recreational areas in rehabilitated nursing facilities shall be separate from those of the nursing facility. Rehabilitated nursing facilities may use the SLF dining room as a social and recreational area.

## n) Kitchens

- 1) SLF kitchens in rehabilitated nursing facilities may be shared with the nursing facility.
- 2) Food shall be prepared on-site in a full service kitchen. The food shall be freshly prepared each day and served in a central dining area.

- 3) Notwithstanding requirements found in any local health or food preparation ordinances, the SLF shall have a kitchen that provides:
  - A) Storage for non-perishable foods and perishable foods;
  - B) Food preparation areas with cleanable surfaces;
  - C) Capacity for resident food distribution at the appropriate temperature;
  - D) Kitchenware washing space as necessary to meet food service needs;
  - E) Hand washing areas separate from food washing areas;
  - F) Area to store and clean garbage cans and carts;
  - G) Self-dispensing ice-making capability; and
  - H) Doors between the kitchen and dining area that are lockable.

## o) Dining Areas

- 1) The SLF shall have handicapped accessible dining space to accommodate residents.
- 2) The dining area in rehabilitated nursing facilities shall be separate from the dining area of the nursing facility.

## p) Laundry Rooms

- 1) Laundry rooms for resident use:
  - A) In addition to laundry services provided under Section 146.230, at least one accessible washer and dryer shall be provided for resident use at no cost. The resident shall be responsible for the cost of all detergent and fabric softeners.

- B) There shall be a sink for hand washing separate from sinks used for laundry rinsing in the laundry area.

- C) There shall be an emergency call system pursuant to Section 146.230(n) in each laundry room available for resident use.

## 2)

- Laundry rooms for SLFs:
  - A) If laundry is done on-site, the laundry equipment shall be located in a separate room from that of the laundry room used by the residents.

- B) The SLF shall have space for laundry soiled with body secretions to be processed separately from other soiled linens and laundry.

- C) There shall be a sink for hand washing separate from sinks

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used for laundry rinsing in the laundry area.

- q) Housekeeping and Maintenance Areas  
There shall be at least one lockable janitor closet in the building. All janitor closets shall have a source of hot and cold running water. Rehabilitated nursing facilities may use the same janitor closet as the nursing facility.

- r) Smoking Areas  
Smoking shall be restricted to areas equipped with ventilation to maintain non-smoking areas smoke-free, or to indoor areas that are separate from other common areas. These areas shall be in compliance with the Illinois Clean Indoor Air Act [410 ILCS 80].

- s) Water Services  
1) The building water supply shall be taken from a water system that is constructed, protected, operated and maintained in conformance with State and local regulations.

- 2) Water temperatures in the central kitchen and laundry used for sanitizing shall meet the standards of the local and State health departments.

- 3) Hot and cold running water with adequate water pressure shall be maintained.

- 4) Drinking water shall be accessible to residents at all times in common areas and residential apartments.

- t) Waste Removal  
1) Liquid wastes shall be collected, stored, and disposed of in accordance with State building and health regulations. Those liquid wastes resulting from compacting shall be disposed of as sewage.

- 2) Sewage disposal shall be operated in compliance with State and local building and health department regulations.

- 3) Solid waste containers for use inside and outside shall be insect-proof, rodent-proof, fire-proof, non-absorbent and water-tight containers with tight fitting lids.

- 4) Indoor garbage containers shall be cleaned frequently enough to minimize the transmission of infection and attraction by insects and rodents.

- 5) Garbage from the public areas of the building shall be collected daily, and garbage from the residential apartments shall be collected as needed. All garbage shall be held in approved receptacles outside the building for removal on a regular schedule. Garbage and trash shall be disposed of in accordance with local ordinances.

(Source: Amended at 23 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

## Section 146.215 SLF Participation Requirements

- a) Facilities or distinct parts of facilities which are selected as SLFs

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and are in good standing with provisions contained in this Subpart B are exempt from the provisions of the Nursing Home Care Act [210 ILCS 45] and the Illinois Health Facilities Planning Act [20 ILCS 3960]. Nursing facilities rehabilitating a portion of the facility to conform with this Subpart B shall be allowed to bank their nursing facility beds until the conclusion of the project or until the facility wishes to withdraw from the project and convert the SLF beds back to NF beds. An SLF does not include:

- 1) A home, institution, or other place operated by the federal government or agency thereof, or by the State of Illinois;
- 2) A "long term care facility" licensed by the Nursing Home Care Act or Hospital Licensing Act. However, a nursing facility licensed under the aforementioned Acts can convert a distinct part to an SLF. If the nursing facility elects to convert a distinct part, the facility retains the Certificate of Need for nursing beds that were converted;
- 3) Any "facility for child care" as defined in the Child Care Act of 1969 [225 ILCS 10];
- 4) Any "Community Living Facility" as defined in the Community Living Facilities Licensing Act [210 ILCS 35];
- 5) Any "community residential alternative" as defined in the Community Residential Alternatives Licensing Act [405 ILCS 30];
- 6) Any nursing home or sanitarium operated solely by and for persons who rely exclusively upon treatment by spiritual means through prayer, in accordance with the creed of any well recognized church or religious denomination;
- 7) Any facility licensed by the Department of Human Services as a community-integrated living arrangement as defined in the Community Integrated Living Arrangements Licensure and Certification Act [210 ILCS 135];
- 8) Any "Supportive Residence" licensed under the Supportive Residences Licensing Act [210 ILCS 65];
- 9) Freestanding hospice facilities [210 ILCS 60]; or
- 10) A "life care facility" as defined in the Life Care Facilities Act [210 ILCS 40].

c) In order to become certified by the Department, an SLF shall:

- 1) Be selected through the RFP process;
  - 2) Negotiate and execute a contract with the Department; and
  - 3) Submit a non-refundable \$500 application fee.
- d) In order to participate as an enrolled Medicaid provider, an SLF shall:
- 1) Be certified by the Department.
  - 2) Submit the following information to the Department at the time of initial enrollment and prior to any subsequent changes:
    - A) The name, address and telephone number of the owner, operator and management agent.
    - B) The name of each member of the governing body if the entity is government sponsored.

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- C) Proof of not-for-profit status if claiming tax-exempt status.
- D) Names of any officers, directors, partners or members of a governing body who have financial interest of at least five percent in the SLF's operation.
- E) Any related party as defined in Section 146.205.
- F) Any owner or related party with a felony criminal conviction.
- G) The name of the individual responsible for the management of the SLF.
- H) The address, mailing address and telephone number of the SLF where services will be provided.
- I) The name and address of service providers contracting with the SLF.
- J) The maximum number of apartments that the SLF has available, the number of apartments set aside for Medicaid and the number of apartments structured for two cohabitants.
- K) The maximum number of residents that the SLF has the capacity to serve at any one time.
- L) Sealed architectural plans, and any changes thereto, for new construction and renovation of an existing building. An existing assisted living facility shall submit its sealed structural and architectural plans for review and approval to the Department or its designee. Verification of approval of the SLF's architectural plans from the Department or its designee. The architectural plans shall conform to the current State building codes for the respective building type: local fire and life safety standards for health care occupancy or the National Fire Protection Association Life Safety Code (NFPA) 101, Chapter 21, Residential Board and Care Occupancies. Plans shall be drawn to a scale of one-fourth inch or one-eighth inch to the foot and specify the date on which construction, modification or conversion is expected to be completed. The plans shall include the name of an architect or engineer duly licensed by the State. The SLF shall be responsible for payment to the Department or its designee for review of the plans.

- 3) Pass an on-site review, initially and annually thereafter, conducted by the Department or its designee, which includes review of:

- A) Documentation that demonstrates physical plant, health and sanitation, and food preparation compliance with local and county ordinances and regulations, compliance with current Fire and Life Safety standards for health care occupancy or the 1997 National Fire Protection Association Life Safety Code (NFPA) 101, Chapter 22 2i, Residential Board and Care Occupancies and State building codes for the respective building type.

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- B) Assessment, service plan and the provision of services identified in Section 146.230 to ensure that resident needs are met.
- C) Patterns to ensure that the SLF has on-site staff sufficient in number to meet the needs of residents. Staff shall demonstrate capacity, within their job responsibilities, to provide covered services and perform tasks.
- D) Compliance with the Department's contract, provider agreement and resident contracts.
- E) Grievance procedures.
- F) Protection of individual rights and resident's involvement directing his or her own care.
- G) Quality assurance policy and procedures established in accordance with Section 146.270.
- H) Resident satisfaction surveys. The SLF shall conduct an annual resident satisfaction survey which shall be available for review by the Department or its designee. The resident satisfaction survey shall include, but not be limited to, whether the:
- i) Residents have the opportunity to provide input into development and implementation of existing SLF policies and procedures;
  - ii) Existing SLF policies and procedures are clear to residents;
  - iii) Residents have access to existing SLF policies and procedures;
  - iv) Residents have a degree of control over personal lifestyle preferences;
  - v) Residents have access to common areas;
  - vi) Residents are satisfied with surroundings as "home-like"; and
  - vii) Residents have the opportunity to exercise personal lifestyle preferences and direct services according to personal preferences (for example, meal choices and refusal of services).
- e) The SLF shall execute a Medicaid provider agreement with the Department.
- f) The SLF shall be willing to accept the SSI rate (less \$90 for personal allowance) for room and board for Medicaid residents. If the private and Medicaid rates are different, the SLF shall be willing to reserve not less than 25 percent of its apartments for Medicaid residents. Those facilities willing to set a commensurate rate for both private pay and Medicaid residents are not required to reserve apartments for Medicaid residents but must be willing to accept Medicaid residents on a first come, first served basis.
- g) SLF certification is not transferable or applicable to any location, provider, management agent or ownership other than that indicated on the Medicaid provider agreement and contract.



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- 1) The Department shall be notified 60 days prior to a change of ownership or management. Change of ownership means a change of five percent or more.
- 2) The Department has the right to terminate its contract with the SLF if the change of ownership involves a barred Medicaid provider.
- 3) The new ownership shall comply with the applicable certification requirements found in this Section 146.215.
- 4) The Department shall conduct an on-site certification review not later than at the time of the next annual certification review or within three months after the effective date of the change of ownership.
- 5) SLF certification shall be deemed to extend to the new owner until the Department separately certifies the SLF under the new owner.

h) An SLF certification shall be effective for two years after the date issued and is renewable at the end of this period pursuant to this Section unless terminated or suspended in accordance with Section 146.200.

h) The certification issued by the Department shall include:

- 1) Name and address of the SLF;
- 2) Name of the owner, operator and management agent for the housing and service entities involved in providing SLF services;
- 3) Maximum number of residents to be served at any time; and
- 4) Number of apartments certified in the SLF.

i) Providers certified for SLF shall not operate or maintain SLF housing and services in combination with a home health, home care, nursing home, hospital, residential care setting, congregate care setting or other type of residence or service agency unless those settings and services are licensed, maintained and operated as separate and distinct entities.

j) Renewal of Certification

- 1) Unless the SLF is notified by the Department 30 days prior to termination of the contract, the certification is automatically renewed renewable upon submission of an application to the Department and the payment of a non-refundable \$500 application fee.

2) Filing of an application for renewal of the certification and payment of the fee before the date of expiration extends the effective date of expiration until the Department takes action upon such application.

2) The Department shall refuse to renew a certification, pursuant to Section 146.280, if the SLF is not in compliance with all applicable laws and statutes, ordinances, codes or Department rules and requirements for the SLF.

k) The SLF shall comply with enrollment conditions identified in 89 Ill. Adm. Code 140.11.

l) The SLF shall comply with the Americans with Disabilities Act of

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1990.

(Source: Amended at 23 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

## Section 146.220 Resident Participation Requirements

- a) The SLF may admit or retain Medicaid residents whose needs can be met through the services described in Section 146.230. These persons who person would typically have a score of 29-40 on the Determination of Need (DON) and need assistance in one or more activities of daily living. These persons must meet all of the following criteria:
  - 1) Be age 22 years or over with a disability (as determined by the Social Security Administration) or elderly (age 65 years or over).
  - 2) Be screened by the Department or its designee one of the State's authorized screening agents and found to be in need of nursing facility level of care. Persons transferring from a nursing facility to an SLF must be screened prior to admission to an SLF and found to be in need of nursing facility level of care.
  - 3) Be without a primary or secondary diagnosis of developmental disability or chronic mental illness. (Developmental disability is defined as a disability which is attributable to mental retardation or a related condition.)
  - 4) Be certified by a physician as requiring the level of care provided in a supportive living facility needing nursing facility level of care.
  - 5) Have income no less than the current maximum allowable amount of Supplemental Security Income (SSI) for a single person. An individual two individuals sharing an apartment may qualify for SLF services if that each individual has income equal to or greater than the individual's share of the SSI rate for a married couple.
- b) All private pay individuals seeking admission to an SLF shall be screened by the Department or its designee State's authorized screening agents. Private pay individuals who choose to be admitted into an SLF when the screening assessment does not justify nursing facility level of care need not be denied access to the SLF. Private pay residents seeking to convert to Medicaid while residing in an SLF shall be screened prior to the point of conversion by the Department or its designee and shall be found to be in need of nursing facility level of care before Medicaid payment may be authorized.
- c) All individuals seeking admission to an SLF shall have documentation of a tuberculosis test administered in the three months prior to admission that indicates the absence of active tuberculosis.
- d) The SLF shall encourage families of residents with impairments that limit the resident's decision making ability to arrange to have a responsible party or guardian represent the resident's interests. All

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residents shall be presented information by the SLF about advance directives including the Durable Power of Attorney for Health Care.

e) A Medicaid resident of an SLF cannot participate in the Department on Aging's Community Care Program or the Department of Human Services' Home Services Program.

(Source: Amended at 23 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

## Section 146.225 Reimbursement for Medicaid Residents

SLFs shall accept the reimbursement provided in this Section as payment in full for all services provided to Medicaid residents.

a) The Department shall establish its portion of the reimbursement for Medicaid residents of SLFs under contract with the SLFs in accordance with the following methodology. The following provisions apply to the methodology described in this subsection (a). The average reimbursement rate shall mean the arithmetic mean. The reimbursement rate for SLFs shall be determined by the Department using available data for nursing home residents who are comparable to residents who would qualify for admission into an SLF pursuant to Section 146.220. The service portion of the rate shall be paid by the Department on a monthly basis. The service portion of the rate shall be established by contract with the Department. The rate cannot exceed 75 percent of the average nursing facility rate minus the average amount contributed from nursing facility resident income for a like population for the geographic area. The only exception to this rate shall be for rehabilitated nursing facilities whose average facility rate for this population is higher than the average long-term care rate based on their geographic area. When this occurs, the higher rate shall be utilized when establishing the SLF rate. During the initial phase of the project, the rate shall be effective for two years.

1) Free-standing SLFs. The rate is calculated as follows:

A) Step one: Determine the average reimbursement rate for residents of nursing facilities who are comparable to residents who qualify for admission into an SLF located in the same geographic region as defined in Section 146.290.

B) Step two: Deduct from the rate in step one the average amount contributed pursuant to 89 Ill. Adm. Code 120.61 by Medicaid residents toward their nursing facility care within that region.

C) Step three: Determine the product of 0.75 and the difference remaining in step two. The rate cannot exceed the calculated result in step three.

2) Rehabilitated Nursing Facilities. The reimbursement rate for rehabilitated nursing facilities shall not exceed the greater of:

A) The reimbursement rate determined under subsection (a)(1) of

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this Section; or

B) The rate calculated as follows:

i) Step one: Determine the average reimbursement rate for residents of the nursing facility being rehabilitated who are comparable to residents who would qualify for admission into an SLF.

ii) Step two: Deduct from the rate in step one the average amount contributed pursuant to 89 Ill. Adm. Code 120.61 by Medicaid residents toward their facility care within that region.

iii) Step three: Determine the product of 0.75 and the difference remaining in step two. The rate cannot exceed the calculated result in step three.

b) Single Occupancy: Each Medicaid resident of an SLF shall be allotted \$90 per month as a deduction from his or her income as a protected amount for personal use. The SLF may charge each Medicaid resident no more than the current SSI rate for a single individual less \$90 for room and board charges. Any income remaining after deduction of the protected \$90 and room and board charges shall be applied first towards medical expenses not covered under the Department's Medical Assistance Program. Any income remaining after that shall be applied to the charges for SLF services paid by the Department.

c) Double Occupancy: In the event a Medicaid eligible resident chooses to share an apartment, the Medicaid resident of an SLF shall be allotted \$90 per month as a deduction from his or her income as a protected amount for personal use. The SLF may charge each Medicaid resident no more than the resident's share of the current SSI rate for a couple less \$90 for room and board charges. The room and board rate for two Medicaid eligible individuals sharing an apartment cannot exceed the SSI rate for a married couple even if the two individuals sharing an apartment are unrelated. Any income of an individual remaining after deduction of the protected \$90 and room and board charges shall be applied first towards that individual's medical expenses not covered under the Department's Medical Assistance Program. Any income of an individual remaining after that shall be applied to that individual's charges for SLF services paid by the Department. If one, or both, of the individuals sharing an apartment is not Medicaid eligible, the SLF is free to negotiate its own rate with the non-Medicaid individual or individuals.

d) The room and board charge for Medicaid residents shall only be increased when the SSI amount is increased. Any room and board charge increase shall not exceed the amount of the SSI increase.

e) No SLF payment shall be made by the Department during a Medicaid resident's temporary absence from the SLF when the absence is due to situations including but not limited to hospitalization or vacation. The resident shall continue to be responsible for room and board charges during any absence. Refer to Section 146.255(b) and (d)(7) for involuntary discharge criteria relating to temporary absence.



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Nursing facilities that have a distinct part certified as an SLF shall not consider converted beds in the nursing facility's licensed capacity when calculating the 93 percent occupancy level for bed reserve payment pursuant to 89 Ill. Adm. Code 140.523.

(Source: Amended at 23 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

## Section 146.230 Services

- a) An SLF must combine housing, personal and health related services in response to the individual needs of residents who need help in activities of daily living. Supportive services shall be available 24 hours per day to meet scheduled and unscheduled needs in a way that promotes resident self-direction and participation in decisions that emphasize independence, individuality, privacy, dignity and autonomy in a residential setting.
- b) The payment rate received by the SLF from the Department for services provided in accordance with this Section shall constitute the full and complete charge for services rendered. Additional payment, other than patient credits authorized by the Department, may not be accepted.
- c) Nursing Services
  - 1) The SLF shall provide for an assessment and service plan pursuant to Section 146.245, initially and annually thereafter, for each SLF resident.
  - 2) When a resident is temporarily unable to administer his or her own medications, the medications shall be administered by a licensed nurse.
  - 3) Nursing services shall include medication set-up (such as preparing weekly pill caddies with that week's medication) and follow-up care that is conducted by a licensed nurse.
  - 4) Other nursing services include episodic and intermittent health promotion or disease prevention counseling and teaching self-care in meeting routine and special health care needs that can be done by other staff under the supervision of a registered nurse.
  - 5) All nursing services shall be provided in accordance with the Illinois Nursing Act of 1987 [225 ILCS 65].
- d) Personal Care
  - 1) The SLF shall provide personal care services for residents, including but not limited to assistance with bathing, eating, dressing, personal hygiene, grooming, toileting, ambulation and transfer.
  - 2) Upon request by the resident, the SLF shall assist in making medical appointments and arranging for transportation to and from the source of medical treatment (payment for medical transportation shall be made in accordance with 89 Ill. Adm. Code 140.490 through 140.492).
  - 3) Personal care services shall be delivered by certified nursing

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assistants who meet the qualifications described in Section 146.235(f)(1).

- e) Medication Oversight and Assistance in Self-Administration
  - 1) Reminding the resident to take his or her medications;
  - 2) Taking medication from where it is stored in the apartment and handing it to the resident when requested to do so by the resident;
  - 3) Opening or uncapping medication containers for physically impaired residents; and
  - 4) Assisting physically impaired residents in the removal of the medication from the container and assisting the resident in consuming or applying the medication when requested to do so by the resident (i.e., placing a dose in a container and placing the container to the mouth of the resident).
- f) Meals
  - 1) The SLF shall provide three meals per day, or two meals per day (noon and evening meals) and a breakfast bar. The meals shall include therapeutic diets as ordered by a physician. The daily food allowance for each resident shall meet the basic food pattern for a general diet for an adult following the recommendations of the Food and Nutrition Board, National Research Council.
  - 2) The SLF shall make available beverages, including coffee, fruit juice and snack foods. This may be accomplished through the use of vending machines.
  - 3) The same menu options shall be offered to all residents regardless of payment source unless there are therapeutic diets ordered by a physician.
  - 4) All menus served shall be kept on file for not less than four months.
  - 5) Supplies of staple foods for a minimum of a one week period and of perishable foods for a minimum of a two day period shall be maintained on the premises. Supplies shall be appropriate to meet the requirements of the menu.
  - 6) Records of all food purchased shall be kept on file for not less than 18 months.
  - 7) The SLF shall store, prepare, distribute and serve food in a manner to protect against contaminants and spoilage and to insure the preparation and serving of food at safe and palatable temperatures.
  - 8) The SLF shall provide and maintain clean and sanitary central kitchen and dining areas. The SLF shall ensure a sanitary and adequate supply of eating and drinking utensils and pots and pans for preparing food in the central kitchen and dining areas.
  - 9) Residents shall be provided with written information about menu plans. Menu cycles shall not be repeated within a one week time frame. There shall be an established mechanism for residents to provide input into the selection and preparation of food.



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- 10) Residents may obtain, prepare and store food in residential apartments if doing so does not represent a health or safety hazard to others.
- 11) Each resident shall be provided with meal service in his or her apartment as a time limited service during periods of documented illness.
- g) Laundry
  - 1) Laundry service shall be provided by the SLF if requested by a resident.
  - 2) The SLF shall provide for the appropriate handling, cleaning, and storage of routine personal laundry, laundry soiled with body secretions and all other laundry. This includes all detergent and fabric softeners required to perform normal routine laundry service at no cost to the resident.
  - 3) The SLF shall provide on-site laundry equipment for resident use in accordance with Section 146.210.
  - 4) Laundry service does not include dry cleaning services.
- h) Housekeeping
  - 1) The SLF shall provide for general housekeeping services at least weekly (house cleaning, laundry, bed making, changing of linens, dusting and vacuuming).
  - 2) All housekeeping services provided in residential apartments shall take into account individual habits and lifestyle preferences.
  - 3) All public areas shall be maintained in a clean and orderly condition.
  - 4) All bathing rooms shall be maintained in a clean and orderly condition.
- i) Maintenance
  - 1) Residential apartments shall be maintained in good repair.
  - 2) The building and grounds shall be maintained clean and free of hazards, with all systems maintained in good working order.
- j) Social and Recreational Programming
  - 1) The SLF shall facilitate the involvement of individual and community volunteer activities with and for residents.
  - 2) The SLF shall provide programs at least twice weekly, which include on-site programs as well as off-site trips, allowing for social and recreational programs for the residents. Transportation shall be provided by the SLF for scheduled activities off-site.
  - 3) The SLF shall provide access to opportunities for scheduled and unscheduled individual and group socialization within the SLF and in the larger community.
- k) Ancillary Services
  - 1) The SLF shall provide transportation for scheduled group shopping and other community and social activities.
  - 2) The SLF shall assist a resident in obtaining needed and preferred services offered outside the SLF at his or her request.

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- 3) When a resident is temporarily unable to shop, the SLF shall provide shopping assistance.
- 1) 24 Hour Response/Security Staff
  - 1) Response/security staff shall be available on the premises 24 hours a day to respond to scheduled or unpredictable needs and emergency calls from residents. Staff shall possess certification in emergency resuscitation. The SLF shall provide one staff person for facilities with ten to 75 apartments, and a second staff person for facilities with 76 to 150 apartments.
  - 2) Security shall be provided 24 hours a day and shall include lockable entrances (accessibility controlled by SLF staff for security purposes during overnight hours) and on-site personnel. All residents shall have 24 hour access.
  - 3) Rehabilitated nursing facilities participating in SLF shall have separate staff on-site in the SLF.
- m) Health Promotion and Exercise Programming
  - 1) The SLF shall offer and encourage the use of health promotion and exercise programs for its residents.
  - 2) The SLF shall develop programs to be held not less frequently than three times per week geared toward promoting better health and fitness of the residents. These programs are in addition to the social and recreational programming described in this Section.
- n) Emergency Call System
  - 1) At least two electronic devices shall be available in each apartment to enable the resident to secure help in an emergency. One device shall be located in each bathroom. The second device shall be located in the bedroom.
  - 2) Electronic devices shall be available in each common area and each laundry room for resident use to enable residents to secure help in an emergency.

(Source: Amended at 23 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

## Section 146.235 Staffing

- a) The SLF shall ensure that a manager shall be at the SLF during normal business hours plus whenever necessary to ensure attention to the management and administration of the resident contracts. Staff shall have access to the manager or the manager's designee at all times.
- b) The manager shall have at least five years experience in providing health care services to adults with disabilities or the elderly population either in an assisted living program, inpatient hospital, long term care setting, adult day care or in a Department approved health related field. The manager shall also have at least two years of progressive management experience.
- c) Licensed and certified staff sufficient in number to meet the needs of

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residents in conjunction with the contractual agreements shall be provided.

- d) Nursing facility staff may be utilized in a rehabilitated nursing facility but may not be on duty in both the nursing facility and SLF at the same time.
- e) Staff shall receive documented training by qualified individuals in their area or areas of responsibility. Training shall be geared toward the manner in which services are to be performed and include techniques for working with persons with disabilities and the elderly populations. This training may have occurred prior to employment with the SLF or may occur after employment begins. In any case, the training shall take place no later than 30 days after beginning employment with the SLF. Staff shall be provided with and the SLF shall provide evidence of semi-annual training in areas related to their employment. All training materials shall be available for review by the Department.
- f) The SLF shall employ certified nursing assistants who are at least 18 years of age and comply with the following:

- 1) Qualifications:
  - Must have successfully completed, or be enrolled in and actively pursuing completion of, a nursing assistant training course or a Department of Public Health approved equivalent training and competency evaluation.

- 2) Job responsibilities shall include, but not be limited to:

- A) Follow and help carry out a resident's written service plan;
  - B) Provide personal care services for residents, including but not limited to bathing, eating, dressing, personal hygiene, grooming, toileting, ambulation and assistance with transfer;
  - C) Observe the resident's functioning, maintain written records of the observations and report any changes to the licensed nurse; and
  - D) Attend initial training, in-service training sessions and staff conferences.
- g) At a minimum, the SLF shall contract with a dietitian who shall come on-site at least twice per quarter for a period of not less than a cumulative total of eight hours. The dietitian shall comply with the following:

- 1) The dietitian is a person who is a licensed dietitian as provided in the Dietetic and Nutrition Services Practice Act [225 ILCS 301. Qualifications:

~~the dietitian is a person who is~~

- A) ~~is eligible for registration by the American Dietetic Association or~~
- B) ~~has a baccalaureate degree with major studies in food and nutrition; dietetics; and food service management; has one year of supervisory experience in the dietetic service of a health care institution; and participates annually in~~

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~~continuing dietetic education-~~

- 2) Job responsibilities shall include, but not be limited to, consultation and training in all food service procedures such as menu planning and review, food preparation, food storage, food service, safety, sanitation and management of therapeutic diets.
- h) The SLF shall employ a minimum of one cook who shall have at least one year of experience in commercial food preparation.
- i) Twenty-four hour response staff shall be at least 18 years of age with a high school diploma or a GED. Response staff shall possess certification in emergency resuscitation. The staff shall respond to scheduled or unpredictable needs and emergency calls from residents.
- j) Nurses on staff, or subcontracted for, shall be licensed by the State of Illinois and shall be responsible for nursing services set forth in Section 146.230.
- k) The SLF shall designate a trained staff person to be responsible for planning and directing social and recreational activities. This person shall be at least 18 years of age with a high school diploma or a GED.

- 1) All certified nursing assistants shall have a criminal history background check that conforms to the Health Care Worker Background Check Act [225 ILCS 46]. No SLF shall knowingly hire, employ or retain any individual in a position, with duties involving direct care for residents, who has been convicted of committing or attempting to commit one or more of the offenses defined under the Health Care Worker Background Check Act unless that individual has obtained a waiver issued by the Department of Public Health. An SLF may conditionally employ an applicant to provide direct care for up to three months pending the results of the criminal history record check.

(Source: Amended at 23 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

## Section 146.255 Discharge Criteria

- a) If a resident does not meet the terms for occupancy as stated in the resident contract, discharge proceedings shall not commence until there has been discussion with the resident and his or her designated representative concerning the reason for involuntary discharge.
- b) The SLF shall provide a resident with 30 days written notice of proposed discharge unless such a delay might jeopardize the health, safety, and well-being of the resident or others. An SLF may provide the 30 day written notice on the first day of the temporary absence or at any point during the temporary absence.
- c) The SLF shall prepare plans to ensure safe and orderly discharge and protect resident health, safety, welfare and rights.
- d) A resident may be involuntarily discharged only if one or more of the following occurs:
  - 1) He or she poses an immediate threat to self or others.

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- 2) He or she needs mental health services to prevent harm to self or others.
- 3) He or she has breached the conditions of the resident contract.
- 4) The SLF has had its certification terminated, suspended, not renewed, or has voluntarily surrendered its certification.
- 5) The SLF cannot meet the resident's needs with available support services.
- 6) The resident has received proper notice of failure to pay by the SLF. This subsection (d)(6) does not apply to Medicaid residents when the failure to pay relates to the Medicaid payment.
- 7) The resident exceeds the SLF's policy for what constitutes a temporary absence from the SLF. A temporary absence shall not be considered a basis for an involuntary discharge until the SLF has gone no less than 30 consecutive days without reimbursement for covered services.

e) The notice required in subsection (b) of this Section shall not apply in any of the following instances:

- 1) When an emergency discharge is mandated by the resident's health care or mental health needs and is in accord with the written orders and medical justification of the attending physician.
- 2) When the discharge is mandated to ensure the physical safety of the resident and other residents as documented in the resident record.

f) The notice required in subsection (b) of this Section shall be on a form prescribed by the Department and shall contain all of the following:

- 1) The stated reason for the proposed discharge;
  - 2) The effective date of the proposed discharge;
  - 3) A statement in not less than 14-point type, which reads: "You have a right to appeal the SLF's decision to discharge you. You may file a request for a hearing with the Department within ten days after receiving this notice. If you request a hearing, you will not be discharged during that time unless you are unsafe to yourself or others. If the decision following the hearing is not in your favor, you will not be discharged prior to the tenth day after receipt of the Department's hearing decision unless you are unsafe to yourself or others. A form to appeal the SLF's decision and to request a hearing is attached. If you have any questions, call the Department at the telephone number listed below.";
  - 4) A hearing request form, together with a postage paid, preaddressed envelope to the Department; and
  - 5) The name, address, and telephone number of the person charged with the responsibility of supervising the discharge.
- g) A request for hearing made under subsection (f) of this Section shall stay a discharge pending a hearing or appeal of the decision, unless a condition which would have allowed discharge in less than 30 days as described under subsections (e)(1) and (2) of this Section develops in

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the interim.

h) A copy of the notice required by subsection (b) of this Section shall be placed in the resident's record and a copy shall be transmitted to the resident and the resident's designated representative.

i) When nonpayment is the basis for involuntary discharge, the resident shall have the right to redeem up to the date that the discharge is to be made and then shall have the right to remain in the SLF.

j) In determining whether a discharge is justified, the burden of proof in the hearing rests with the entity requesting the discharge.

k) If the Department determines that a discharge is justified under subsection (d) of this Section, the resident shall not be required to leave the SLF before the tenth day after receipt of the Department's hearing decision unless a condition which would have allowed discharge as described under subsections (e)(1) and (2) of this Section develops in the interim.

l) The SLF shall offer relocation assistance to residents discharged under this Section, including information on available alternative placements. A resident or his or her designated representative shall be involved in planning the discharge and shall choose among the available alternative placements. Where an emergency makes prior resident involvement impossible, the SLF may arrange for a temporary placement until a final placement can be arranged. The SLF may offer assistance in relocating from a temporary to a final placement.

m) When a resident discharges on a voluntary basis, he or she shall provide the SLF with 30 days written notice of intent to discharge, except where a delay would jeopardize the health, safety, and well-being of the resident or others.

n) In cases of discharge under subsection (d), (e), (m) or (o) of this Section, the resident is no longer bound by the resident contract.

o) The Department may discharge any resident from an SLF when any of the following conditions exist:

- 1) The Department has terminated or suspended the SLF certification.
  - 2) The SLF is closing or surrendering its certification and arrangement for relocation of the resident has not been made at least 30 days prior to closure or surrender.
  - 3) The Department determines that an emergency exists which requires immediate discharge of the resident.
- p) In the event of a Department initiated discharge, the Department may offer relocation assistance to residents. A resident or his or her designated representative shall be involved in planning the discharge and shall choose among the available alternative placements.

(Source: Amended at 23 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

## Section 146.290 Geographic Areas

These geographic areas define boundaries, according to counties, that are used



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in rate setting for supportive living facilities.

- a) Chicago -- City of Chicago, Cook (other than Chicago), DuPage, Kane, Lake and McHenry.
- b) South Suburb -- Grundy, Kankakee, Kendall and Will.
- c) South -- Alexander, Clay, Crawford, Edwards, Effingham, Fayette, Franklin, Gallatin, Hamilton, Hardin, Jackson, Jasper, Jefferson, Johnson, Lawrence, Marion, Massac, Perry, Pope, Pulaski, Randolph, Richland, Saline, Union, Wabash, Washington, Wayne, White and Williamson.
- d) St. Louis -- Bond, Clinton, Madison, Monroe and St. Clair.
- e) Central -- Bureau, Champaign, Clark, Coles, Cumberland, Dewitt, Douglas, Edgar, Ford, Fulton, Henderson, Iroquois, Knox, LaSalle, Livingston, Macon, Marshall, McDonough, McLean, Moultrie, Peoria, Platt, Putnam, Shelby, Stark, Tazewell, Vermilion, Warren and Woodford.
- f) West Central -- Adams, Brown, Calhoun, Cass, Christian, Greene, Hancock, Jersey, Logan, Macoupin, Mason, Menard, Montgomery, Morgan, Pike, Sangamon, Schuyler and Scott.
- g) Northwest -- Boone, Carroll, DeKalb, Henry, Jo Daviess, Lee, Mercer, Ogle, Rock Island, Stephenson, Whiteside and Winnebago.

(Source: Added at 23 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

## DEPARTMENT OF REVENUE

## NOTICE OF PROPOSED AMENDMENTS

1) Heading of the Part: Payment of Taxes by Electronic Funds Transfer

2) Code Citation: 86 Ill. Adm. Code 750

3) Section Numbers:

750.100 Amendment  
750.300 Amendment  
750.500 Amendment  
750.600 Amendment

4) Statutory Authority: 35 ILCS 640, 20 ILCS 2505/39C-1

5) A Complete Description of the Subjects and Issues Involved: This proposed rulemaking adds payments of Electricity Excise Tax to the list of taxes required to be paid by electronic funds transfer and how the thresholds for such requirements are calculated. Adds Electricity Excise Tax payments to the list of taxes that may be paid through the voluntary use of electronic funds transfer. Makes other technical changes regarding when taxpayers should initiate ACH debits and credits.

6) Will this proposed rule replace an emergency rule currently in effect? No

7) Does this rulemaking contain an automatic repeal date? No

8) Does this proposed amendment contain incorporations by reference? No

9) Are there any other proposed amendments pending on this Part? No

10) Statement of Statewide Policy Objectives: This rulemaking does not create a State mandate, nor does it modify any existing State mandates.

11) Time, Place and Manner in which interested persons may comment on this proposed rulemaking: Persons who wish to submit comments on this proposed rulemaking may submit them in writing by no later than 45 days after publication of this notice to:

Terry Charlton  
Associate Counsel  
Illinois Department of Revenue  
Legal Services Office  
101 West Jefferson  
Springfield, Illinois 62794  
Phone: (217) 782-6996

12) Initial Regulatory Flexibility Analysis:

A) Types of small businesses, small municipalities and not for profit corporations affected: Any small business, small municipality, or

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not-for-profit corporation that has chosen to become self-assessors under the Electricity Excise Tax Law.

B) Reporting, bookkeeping or other procedures required for compliance:  
None

C) Types of professional skills necessary for compliance: None

13) Regulatory Agenda on which this rulemaking was summarized: July 1998

The full text of the Proposed Amendment(s) begins on the next page:

PART 750  
PAYMENT OF TAXES BY ELECTRONIC FUNDS TRANSFER

Section	Scope of the Program and Rules
750.100	Definitions
750.200	Payments Required to be Paid by Electronic Funds Transfer
750.300	Eligibility Determination and Taxpayer Notification
750.400	Voluntary Program Participation
750.500	Methods of Electronic Funds Transfer Payment
750.600	Payment Transmission Errors
750.700	Department Notification Requirement
750.800	Due Date; General Provisions
750.900	

AUTHORITY: Implementing and authorized by the Retailers' Occupation Tax Act [35 ILCS 120].

SOURCE: Adopted at 17 Ill. Reg. 18132, effective October 4, 1993; amended at 18 Ill. Reg. 15612, effective October 11, 1994; amended at 20 Ill. Reg. 9111, effective July 2, 1996; amended at 22 Ill. Reg. 10904, effective June 8, 1998; amended at 23 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_.

Section 750.100 Scope of the Program and Rules

- a) Public Act 87-1132, as amended by P.A. 87-1246, requires Illinois taxpayers with liabilities for income taxes and occupation and use taxes exceeding established thresholds to pay their tax liabilities by electronic funds transfer beginning in October 1993. The law provides that the statutory thresholds are calculated by tax type. In other words, a taxpayer with both retailers' occupation tax liability and income tax liability will not have those tax liabilities combined when determining eligibility for the program. In addition, income tax withholding and a taxpayer's estimated income tax liabilities are separately considered in determining eligibility. The threshold for required participation in the program is to be phased in over a three year period.
- b) Public Act 90-561 requires delivering suppliers of electricity and self-assessing purchasers of electricity with liabilities under the Electricity Excise Tax Law exceeding established thresholds to pay those liabilities to the Department by electronic funds transfer.
- c) b) Electronic funds transfer replaces the physical movement and handling of paper checks with electronic instructions to financial institutions to transfer funds between accounts of those making and receiving payments.
- d) e) Use of electronic funds transfer is intended to:

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- 1) make the payment of taxes easier for taxpayers;
- 2) enhance state revenues through acceleration of the collection mechanism for taxes; and
- 3) improve enforcement and compliance through the elimination of the delays and uncertainties which result from mailing and manually processing paper returns and tax payments.

(Source: Amended at 23 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

## Section 750.300 Payments Required to be Paid by Electronic Funds Transfer

## a) Income tax payments

- 1) Beginning on October 1, 1993, certain withholding tax payments and estimated income tax payments will be required to be paid by electronic funds transfer. The threshold amounts are set by law, change over time, and are detailed below.
- 2) *Beginning on October 1, 1993, a taxpayer who has an average monthly tax liability of \$150,000 or more under Article 7 of the Act shall make all payments required by rules of the Department by electronic funds transfer. Beginning October 1, 1993, a taxpayer who has an average quarterly estimated tax payment obligation of \$450,000 or more under Article 8 of the Act shall make all payments required by rules of the Department by electronic funds transfer. (Section 601.1 of the Illinois Income Tax Act [35 ILCS 5/601.1] ("the IITA"))*

A) Beginning on October 1, 1994, the threshold for taxpayers with withholding liability under Article 7 of the IITA drops to an average monthly liability of \$100,000, and, beginning on October 1, 1995, the threshold drops to an average monthly liability of \$50,000.

B) Beginning on October 1, 1994, the threshold for taxpayers with liability for estimated tax payments under Article 8 of the IITA drops to an average quarterly estimated tax payment obligation of \$300,000 and, beginning on October 1, 1995, the threshold drops to an average quarterly estimated tax payment obligation of \$150,000.

- 3) The Department will only require payments by electronic funds transfer in those circumstances in which it is cost-effective for the Department to receive payments by electronic funds transfer and where receipt of payments by electronic funds transfer is consistent with the Department's tax processing capabilities.

4) Taxpayers over the statutory thresholds will only be required to make certain types of income tax payments by electronic funds transfer.

A) Taxpayers with income tax withholding liabilities over the statutory thresholds shall make IL-501

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payments by electronic funds transfer. All other withholding payments by those taxpayers shall be made by conventional means.

B) Corporate taxpayers with estimated income and replacement tax liabilities over the statutory thresholds shall make IL-1120 ES payments and IL-505B payments by electronic funds transfer.

C) Individual taxpayers with estimated income tax liabilities over the statutory thresholds shall make IL-1040ES and IL-505I payments by electronic funds transfer.

D) Any other taxpayers not listed above who incur estimated income tax liabilities over the statutory thresholds will, upon contact by the Department, be required to make subsequent estimated payments by electronic funds transfer as directed by the Department.

## b) State and local occupation and use tax payments

1) Beginning on October 1, 1993, the Department will require certain State and local occupation and use tax payments to be made by electronic funds transfer. Subsection (b)(4) below sets forth the types of payments that must be made by electronic funds transfer.

2) *Beginning October 1, 1993, a taxpayer who has an average monthly tax liability of \$150,000 or more shall make all payments required by rules of the Department by electronic funds transfer. (Section 3 of the Retailers' Occupation Tax Act [35 ILCS 120/3] ("the ROT"))*

A) Beginning October 1, 1994, the threshold for taxpayers required to make payments by electronic funds transfer drops to those taxpayers with average monthly tax liability of \$100,000.

B) Beginning October 1, 1995, the threshold for taxpayers required to make payments by electronic funds transfer drops to those taxpayers with average monthly tax liability of \$50,000.

3) The Department will only require payments by electronic funds transfer in those circumstances in which it is cost-effective for the Department to receive payments by electronic funds transfer and where receipt of payments by electronic funds transfer is consistent with the Department's tax processing capabilities.

4) Taxpayers over the statutory thresholds will only be required to make RR-3 sales tax accelerated quarter-monthly payments, ST-1 return payments, PST-1 return payments and PST-3 return payments by electronic funds transfer. Any other payments that accompany a tax return (for example, ST-1-X return payments, 556 return payments, etc.) may not be paid by electronic funds transfer.

c) Electricity Excise Tax payments



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- 1) Beginning October 1, 1999, each delivering supplier or self-assessing purchaser whose average monthly liability under the Electricity Excise Tax Law was \$10,000 or more is required to make all payments by electronic funds transfer. The calculation to determine the average monthly liability is made by taking the sum of the liabilities of the delivering supplier or self-assessing purchaser for the immediately preceding calendar year and dividing by the number 12.
- 2) The Department will calculate the delivering supplier's or self-assessing purchaser's average monthly liability for calendar year 1998, and only for calendar year 1998, by taking the sum of the delivering supplier's or self-assessing purchaser's liabilities for the last 5 months of calendar year 1998 and dividing by the number 12.

(Source: Amended at 23 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

## Section 750.500 Voluntary Program Participation

- a) Any taxpayer who is not required to make estimated or accelerated payments by electronic funds transfer is encouraged to seek the permission of the Department to make payments by electronic funds transfer.
- b) Taxpayers who wish to voluntarily participate in the electronic funds transfer program must file an application for participation with the Department. Taxpayers should be aware that it will generally take a minimum of 60 days for the Department to process a request for voluntary participation in the electronic funds transfer program.
- c) In determining whether to grant or deny an application for participation the Department will consider the filing and payment history of the taxpayer, the average amount of payments made by the taxpayer and the cost to the Department of the taxpayer's participation in the program versus the cost to the Department of processing traditional forms of payment from the taxpayer.
- d) Once an applicant has been approved as a voluntary participant, all required payments must be made by electronic funds transfer for the next twelve months. Voluntary participants may not switch back and forth between electronic funds transfer and payment by check or draft. Failure to pay by the due date by electronic funds transfer may be grounds for dismissal from voluntary participation in the program.
- e) The Department is accepting voluntary electronic funds transfer payments of the following taxes and fees:

ICT-1, Electricity Distribution and Invested Capital Tax  
Estimated Payment

ICT-4, Electricity Distribution and Invested Capital Tax Return

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(payment only)

IL-501, Illinois Withholding Tax Payment

IL-501-I, Automatic Extension Payment for Individuals

IL-505-B, Payment of Automatic Extension (for corporations, small business corporations, partnerships, fiduciaries, or exempt organizations)

IL-1040-ES, Estimated Income Tax Payment for Individuals

IL-1120-ES, Estimated Income and Replacement Tax Payment for Corporations

PST-1, Prepaid Sales Tax Return (payment only)

PST-3, Prepaid Sales Tax Quarter-Monthly Payment (for accelerated sales tax filers)

RG-1, Gas Revenue Tax Return (payment only)

RPU-13, Electricity Excise Tax Return (payment only)

RPU-35, ~~Public-Utilities-Tax-Return-(payment-only)~~

RPU-50, ~~Public-Utilities~~ Quarter-Monthly Payment - Electric, Gas, Telecommunications Excise Tax, and Telecommunications Infrastructure Maintenance Fee

RR-3, Sales and Use Tax Quarter-Monthly Payment (for accelerated sales and use tax filers)

RT-2, Telecommunications Excise Tax Return (payment only)

RT-10, Telecommunications Infrastructure Maintenance Fee Return (payment only)

ST-1, Sales and Use Tax Return (payment only)

(Source: Amended at 23 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

## Section 750.600 Methods of Electronic Funds Transfer Payment

- a) There are two primary methods for payment by electronic funds transfer under the program, along with one emergency backup method. These methods are ACH Debit, ACH Credit and Fedwire. Taxpayers may use

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either the ACH Debit or Credit methods for payment. Fedwire is only offered as an emergency backup method of payment.

- b) To use the ACH debit option taxpayers must place a toll-free call to the Department's data collection service and provide the appropriate account number and required tax payment information. The data collection service will then provide the taxpayer with a unique "confirmation number" to acknowledge the call. The call must be placed by 3:30 pm Central Standard Time at least one day prior to the due date for the payment. The data collection service will initiate the ACH debit to the taxpayer's account the same day the taxpayer calls the Department, except in the case of ACH warehousing by the data collection service which will be initiated the working day prior to the due date, and a credit to the Department's account will be made the following day. When a taxpayer chooses this payment option, the Department will provide the taxpayer with a detailed set of technical instructions related to the payment mechanism.

- c) To use the ACH credit option, the taxpayer initiates a credit by instructing its bank to transfer the tax due from the taxpayer's account to the Department's account. The taxpayer's bank will then insert a "trace number" into the payment transaction to be used as a payment verification. In addition to the payment amount, taxpayer account posting information is sent with the funds transfer using the TXP convention. This is a standard format developed for use by all states accepting tax payments by means of ACH credit. A copy of the TXP convention is provided as a portion of the technical instructions provided to taxpayers making payment in this form.

- 1) The ACH credit must be initiated at least one day prior to the due date of the payment so the funds are available on the due date of the payment, or earlier if required by the taxpayer's bank so the funds are available on the due date.

- 2) Before choosing this option on the registration form, a taxpayer should contact its bank to determine what ACH services are offered by the bank.

- d) The Fedwire option for payment is offered by the Department only as a backup method. If for some reason a taxpayer is unable to initiate an ACH debit or ACH credit one day prior to the due date of the tax, Fedwire is the only electronic alternative method available to avoid late payment penalties and interest. If this backup method is used, the taxpayer's bank must initiate the Fedwire by noon Central Standard Time on the tax due date.

- 1) Fedwires have costs associated with them for both the initiator and the receiver. A taxpayer using this option will be required to pay the initiator's fee, and the receiver fee will be charged to the Department.

- 2) To effectively credit the payment information to the taxpayer's account, the Department's standard Fedwire format (the Department requires the same data as the TXP convention) information should be entered by taxpayer's bank as part of the Fedwire transaction.

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The taxpayer's bank should provide taxpayer with a paper copy of the transmission for taxpayer's records. A copy of the Department's standard Fedwire format is included in the technical instructions provided all program participants.

- 3) Fedwire is not a routine electronic funds transfer option. If a taxpayer uses this emergency backup option, taxpayer must contact the Department by telephone in advance to provide notification of the emergency situation.

(Source: Amended at 23 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

SECRETARY OF STATE  
NOTICE OF PROPOSED AMENDMENTS

- 1) Heading of the Part: The Illinois State Library Training Program Grants
- 2) Code Citation: 23 Ill. Adm. Code 3070
- 3) Section Numbers: Proposed Action:  
3070.100 Amendment  
3070.110 Amendment  
3070.130 Amendment  
3070.140 Amendment  
3070.160 Amendment  
3070.170 Amendment
- 4) Statutory Authority: Implementing and authorized by Sections 2 and 7(q) of the State Library Act [15 ILCS 320] and the Library Services and Technology Act (20 USC 9121 et seq.).
- 5) A Complete Description of the Subjects and Issues Involved: Allows training grant recipients to meet their work requirement in a broader number of libraries and library systems.
- 6) Will These proposed amendments replace an emergency rule currently in effect? No
- 7) Does this rulemaking contain an automatic repeal date? No
- 8) Do these proposed amendments contain incorporations by reference? No
- 9) Are there any other proposed amendments pending on this Part? No
- 10) Statement of Statewide Policy Objectives: This rulemaking does not create or expand a State mandate.
- 11) Time, Place, and Manner in which interested persons may comment on this proposed rulemaking: Written comments and questions should be mailed, faxed, or sent electronically within 45 days after publication of the proposed amendments in the *Illinois Register* to:

Ms. Kathleen L. Bloomberg  
Associate Director for Communications & Planning  
Illinois State Library  
300 S. Second Street  
Springfield IL 62701-1796  
217/785-0052  
217/782-8261 FAX  
kbloom@library.sos.state.il.us INTERNET

- 12) Initial Regulatory Flexibility Analysis:

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NOTICE OF PROPOSED AMENDMENTS

- A) Types of small businesses, small municipalities and not for profit corporations affected: None
- B) Reporting, bookkeeping or other procedures required for compliance: None
- C) Types of professional skills necessary for compliance: None
- 13) Regulatory Agenda on which this rulemaking was summarized: July 1998
- The full text of the Proposed Amendments is identical to the text of the Emergency Amendments that appear in this issue of the Illinois Register on page \_\_\_\_\_.



## TEACHERS' RETIREMENT SYSTEM OF THE STATE OF ILLINOIS

## NOTICE OF PROPOSED AMENDMENTS

- 1) Heading of the Part: The Administration and Operation of the Teachers' Retirement System

- 2) Code Citation: 80 Ill. Adm. Code 1650

- 3) Section Number: Proposed Action:  
1650.410 Amendment

- 4) Statutory Authority: Implementing and authorized by Article 16 of the Illinois Pension Code [40 ILCS 5/Art. 16].

- 5) A Complete Description of the Subjects and Issues Involved: The Teachers' Retirement System is amending 80 Ill. Adm. Code 1650.410, presently entitled Refund for Duplicate or Noncreditable Service, to more accurately describe the limited circumstances when a TRS member is eligible to receive a partial return of contributions from the System. The new rule will now be entitled, Return of Contributions for Duplicate or Excess Service. The new rule is also being promulgated to provide a window period ending October 31, 1999, to allow members who have upgraded service credit under the provisions of 40 ILCS 5/16-129.1 to receive a refund without interest for previously purchased optional service which causes the member to exceed the number of years necessary to receive the maximum benefit under 40 ILCS 5/16-133(e).

- 6) Will this proposed amendment replace an emergency amendment currently in effect? No

- 7) Does this rulemaking contain an automatic repeal date? No

- 8) Does this proposed amendment contain incorporations by reference? No

- 9) Are there any other proposed amendments pending on this Part? No

- 10) Statement of Statewide Policy Objectives: This rulemaking does not create or expand a State mandate.

- 11) Time, Place, and Manner in which interested persons may comment on this Proposed rulemaking: Comments on the proposed amendment may be submitted in writing for a period of 45 days following publication of this Notice to:

Thomas S. Gray  
Assistant General Counsel  
Teachers' Retirement System  
2815 West Washington  
P.O. Box 19253  
Springfield, Illinois 62794-9253  
(217) 753-0961

## TEACHERS' RETIREMENT SYSTEM OF THE STATE OF ILLINOIS

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- 12) Initial Regulatory Flexibility Analysis:

- A) Types of small businesses, small municipalities and not for profit corporations affected: None

- B) Reporting, bookkeeping or other procedures required for compliance: None

- C) Types of professional skills necessary for compliance: None

- 13) Regulatory Agenda on which this rulemaking was summarized: January 1998

The full text of the Proposed Amendments begin on the next page:

TEACHERS' RETIREMENT SYSTEM OF THE STATE OF ILLINOIS

NOTICE OF PROPOSED AMENDMENTS

TITLE 80: PUBLIC OFFICIALS AND EMPLOYEES

SUBTITLE D: RETIREMENT SYSTEMS

CHAPTER III: TEACHERS' RETIREMENT SYSTEM OF THE STATE OF ILLINOIS

PART 1650

THE ADMINISTRATION AND OPERATION OF THE TEACHERS' RETIREMENT SYSTEM

SUBPART A: REPORTS BY BOARD OF TRUSTEES

Section  
1650.110 Annual Financial Report (Repealed)

SUBPART B: BASIC RECORDS AND ACCOUNTS

Section  
1650.110 Membership Records  
1650.120 Claims Records (Repealed)  
1650.130 Individual Accounts (Repealed)  
1650.140 Ledger and Accounts Books (Repealed)  
1650.150 Statistics (Repealed)  
1650.160 Confidentiality of Records  
1650.180 Filing and Payment Requirements  
1650.181 Early Retirement Incentive Payment Requirements  
1650.182 Waiver of Additional Amounts Due  
1650.183 Definition of Employer's Normal Cost

SUBPART C: FILING OF CLAIMS

Section  
1650.210 Claim Applications  
1650.220 Reclassification of Disability Claim (Repealed)  
1650.230 Medical Examinations and Investigations of Claims  
1650.240 Refunds; Impermissible Refunds; Canceled Service; Repayment  
1650.250 Death Benefits  
1650.260 Evidence of Age  
1650.270 Reversionary Annuity - Evidence of Dependency  
1650.271 Evidence of Parentage  
1650.272 Eligible Child Dependent By Reason of a Physical or Mental Disability  
1650.280 Evidence of Marriage  
1650.290 Offsets

SUBPART D: MEMBERSHIP AND SERVICE CREDITS

Section  
1650.310 Effective Date of Membership

TEACHERS' RETIREMENT SYSTEM OF THE STATE OF ILLINOIS

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1650.320 Method of Calculating Service Credits  
1650.325 Method of Calculating Service Credit for Recipients of a Disability Benefit or Occupational Disability Benefit  
1650.330 Duplicate Service Credit  
1650.340 Service Credit for Leaves of Absence  
1650.341 Service Credit for Involuntary Layoffs  
1650.345 Service Credit for Periods Away From Teaching Due to Pregnancy  
1650.346 Service Credit for Periods Away From Teaching Due to Adoption  
1650.350 Service Credit for Unused Accumulated Sick Leave Upon Retirement  
1650.355 Purchase of Optional Service - Required Minimum Payment  
1650.356 Payroll Deduction Program  
1650.360 Settlement Agreements and Judgments  
1650.370 Calculation of Average Salary (Renumbered)  
1650.380 Definition of Actuarial Equivalent  
1650.390 Independent Contractors  
1650.391 Optional 2.2 Upgrade of Earned and Credited Service  
1650.392 2.2 Upgrade of Optional Service Not Credited at Initial Upgrade Application

SUBPART E: CONTRIBUTION CREDITS AND PAYMENTS

Section  
1650.410 Return of Contributions Refunds for Duplicate or Excess Service Noncreditable-Service  
1650.420 Interest on Deficiencies (Repealed)  
1650.430 Installment Payments (Repealed)  
1650.440 Small Deficiencies, Credits or Death Benefit Payments  
1650.450 Definition of Salary  
1650.451 Reporting of Conditional Payments  
1650.460 Calculation of Average Salary  
1650.470 Rollover Distributions  
1650.480 Rollovers to the System

SUBPART F: RULES GOVERNING ANNUITANTS AND BENEFICIARIES

Section  
1650.505 Beneficiary (Repealed)  
1650.510 Re-entry Into Service  
1650.520 Suspension of Benefits  
1650.530 Power of Attorney  
1650.540 Conservators/Guardians  
1650.550 Presumption of Death  
1650.560 Benefits Payable on Death  
1650.570 Survivors' Benefits  
1650.575 Full-time Student - Receipt of Survivors Benefits Until Age 22  
1650.580 Evidence of Eligibility  
1650.590 Comptroller Offset  
1650.595 Overpayments

## TEACHERS' RETIREMENT SYSTEM OF THE STATE OF ILLINOIS

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## SUBPART G: ATTORNEY GENERALS' OPINION

Section 1650.605 Policy of the Board Concerning Attorney Generals' Opinion (Repealed)

## SUBPART H: ADMINISTRATIVE REVIEW

Section 1650.610 Staff Responsibility  
 1650.620 Right of Appeal  
 1650.630 Form of Written Request  
 1650.640 Prehearing Procedure  
 1650.650 Hearing Procedure  
 1650.660 Rules of Evidence

## SUBPART I: AMENDMENTS TO BYLAWS AND RULES

Section 1650.710 Amendments

## SUBPART J: RULES OF ORDER

Section 1650.810 Parliamentary Procedure

## SUBPART K: FREEDOM OF INFORMATION ACT REQUESTS

Section 1650.910 Summary and Purpose  
 1650.920 Definitions  
 1650.930 Submission of Requests  
 1650.940 Form and Content of FOIA Requests  
 1650.950 Appeal of a Denial  
 1650.960 Executive Director's Response to Appeal  
 1650.970 Response to FOIA Requests  
 1650.980 Inspection of Records at System Office  
 1650.990 Copies of Public Records  
 1650.995 Materials Available Under Section 4 of FOIA

## SUBPART L: BOARD ELECTION PROCEDURES

Section 1650.1000 Nomination of Candidates  
 1650.1010 Petitions  
 1650.1020 Eligible Voters  
 1650.1030 Election Materials  
 1650.1040 Marking of Ballots  
 1650.1050 Return of Ballots

## TEACHERS' RETIREMENT SYSTEM OF THE STATE OF ILLINOIS

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1650.1060 Observation of Ballot Counting  
 1650.1070 Certification of Ballot Counting  
 1650.1080 Challenges to Ballot Counting

## SUBPART M: RETIREMENT BENEFITS

Section 1650.2900 Excess Benefit Arrangement

AUTHORITY: Implementing and authorized by Article 16 of the Illinois Pension Code [40 ILCS 5/Art. 16]; Freedom of Information Act [5 ILCS 140]; Internal Revenue Code (26 USC 1 et seq.); Section 5-15 of the Illinois Administrative Procedure Act [5 ILCS 100/5-15].

SOURCE: Filed June 20, 1958; emergency rules adopted at 2 Ill. Reg. 49, p. 249, effective November 29, 1978, for a maximum of 150 days; adopted at 3 Ill. Reg. 9, p. 1, effective March 3, 1979; codified at 8 Ill. Reg. 16350; amended at 9 Ill. Reg. 20885, effective December 17, 1985; amended at 12 Ill. Reg. 16896, effective October 3, 1988; amended at 14 Ill. Reg. 18305, effective October 29, 1990; amended at 15 Ill. Reg. 16731, effective November 5, 1991; amended at 17 Ill. Reg. 1631, effective January 22, 1993; amended at 18 Ill. Reg. 6349, effective April 15, 1994; emergency amendment at 18 Ill. Reg. 8949, effective May 24, 1994, for a maximum of 150 days; emergency modified at 18 Ill. Reg. 12880; amended at 18 Ill. Reg. 15154, effective September 27, 1994; amended at 20 Ill. Reg. 3118, effective February 5, 1996; emergency amendment at 21 Ill. Reg. 483, effective January 1, 1997, for a maximum of 150 days; amended at 21 Ill. Reg. 2422, effective January 31, 1997; amended at 21 Ill. Reg. 4844, effective March 27, 1997; emergency amendment at 21 Ill. Reg. 17159, effective December 9, 1997, for a maximum of 150 days; amended at 22 Ill. Reg. 7243, effective April 9, 1998; emergency amendment at 22 Ill. Reg. 7314, effective April 9, 1998, for a maximum of 150 days; emergency amendment at 22 Ill. Reg. 9374, effective May 14, 1998, for a maximum of 150 days; emergency rule modified in response to JCAR Objection at 22 Ill. Reg. 11640; emergency amendment at 22 Ill. Reg. 13151, effective June 29, 1998, for a maximum of 150 days; amended at 22 Ill. Reg. 15620, effective August 8, 1998; amended at 22 Ill. Reg. 19079, effective October 1, 1998; amended at 23 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_.

## SUBPART E: CONTRIBUTION CREDITS AND PAYMENTS

Section 1650.410 Return of Contributions Refunds for Duplicate or Excess Service Nonreleasable--Service

- a) In the event contributions to the System are made in error for service covered by another public employee pension system in Illinois, a refund of such contributions shall be returned to the member made.
- b) If a member contributes to the System for optional teaching service, but is unable to claim all of this service at the date of retirement



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or death because the service is determined to be excess service noncreditable (for example, when the member's service record at retirement or death causes the optional service to be excess service based on the statutory limits on the allowed proportion of out-of-system-to-regular-service), then the refund of contributions for such excess service or a portion thereof may upon request shall be returned paid to the member or the member's beneficiaries.

1) The term "excess service" shall mean that period of service that would exceed the number of years of service:

A) necessary for the member to receive the 75% maximum benefit under Section 16-133(e) of the Illinois Pension Code [40 ILCS 5/16-133(e)] if the member elected pursuant to Section 16-129.1 [40 ILCS 5/16-129.1] to upgrade the retirement benefit based upon pre-July 1998 service; or

B) allowed to be purchased under Section 16-127(b)(2) [40 ILCS 5/16-127(b)(2)].

2) The return of contributions shall be limited to the amount attributable to the purchase of optional service under Section 16-127 [40 ILCS 5/16-127].

3) To determine the amount of contributions to be returned to a member pursuant to this Section, the System shall apply the following formula:

A) divide the total cost of all optional teaching service purchased by the member by the total amount of optional teaching service purchased.

B) multiply the resulting average cost of optional teaching service by the amount of excess service the member requests to be returned.

C) the resulting figure shall be the amount returned to the member at retirement.

4) No interest shall be payable upon the amount returned.

(Source: Amended at 23 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

## OFFICE OF BANKS AND REAL ESTATE

## NOTICE OF ADOPTED AMENDMENTS

1) Heading of the Part: Real Estate Appraiser Certification

2) Code Citation: 68 Ill. Adm. Code 1455

3) Section Numbers:

1455.10 New Section

1455.20 New Section

1455.30 New Section

1455.40 New Section

1455.50 New Section

1455.60 New Section

1455.70 New Section

1455.80 New Section

1455.90 New Section

1455.100 New Section

1455.110 New Section

1455.120 New Section

1455.130 New Section

1455.200 New Section

1455.210 New Section

1455.220 New Section

1455.230 New Section

1455.300 New Section

1455.310 New Section

1455.320 New Section

1455.400 New Section

1455.410 New Section

1455.420 New Section

1455.430 New Section

1455.440 New Section

1455.450 New Section

1455.460 New Section

1455.470 New Section

1455.480 New Section

1455.490 New Section

1455.500 New Section

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1455.600 New Section

1455.610 New Section

1455.620 New Section

1455.620 New Section

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APPENDIX A      New Section  
APPENDIX B      New Section

- 4) Statutory Authority: Implementing and authorized by the Real Estate Appraiser Licensing Act [225 ILCS 457].
- 5) Effective Date of Rulemaking: November 20, 1998
- 6) Does this rulemaking contain an automatic repeal date? No
- 7) Does this rulemaking contain incorporations by reference? Yes
- 8) A copy of the adopted amendment, including any material incorporated by reference, is on file in the agency's principal office and is available for public inspection.

9) Notice of Proposal Published in Illinois Register:

July 31, 1998; 22 Ill. Reg. 14168

10) Has JCAR issued a Statement of Objections to these rules? No

- 11) Differences between proposal and final version: Several nonsubstantive editing changes were made. Also, the following substantive changes were made.

- 1) The definition of "Uniform Standards of Professional Appraisal Practice" or "USPAP" was revised in Section 1455.10 as follows:

"Uniform Standards of Professional Appraisal Practice" or "USPAP" means the Provisions and Standards of Professional Appraisal Practice as promulgated by the Appraisal Standards Board of the Appraisal Foundation. The 1998 USPAP, effective January 1, 1998 by the Appraisal Standards Board of the Appraisal Foundation, is hereby incorporated by reference with no later amendments or editions.

- 2) The last sentence of Section 1455.210 (a)(8) was revised as follows:

Credit for elective hours can be achieved by successful completion of courses approved in the IL E curriculum or by successful completion of courses with excess hours approved and allocated for elective credit in accordance with subsection (a)(9) of this Section.

- 3) Section 1455.210(a)(9)(A)(B) was added as follows:

- 9) If 100% of the required topics for IL II through IL V courses are presented, the course shall be approved for the minimum required hours. Two 15 hour courses from a single provider may be

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approved to meet a 30 hour curriculum requirement, provided the courses together cover a minimum of 100% of the required curriculum topics. An application for one 15 hour course in a curriculum requiring 30 hours will be denied. For courses in the IL I curriculum, 100% of the listed topics must be covered, courses in the IL VI curriculum and IL VII curriculum must cover topics as described in accordance with subsections (a)(6) & (7) of this Section. IL E courses will be approved based upon the Board's review of the course as to the value of topics to be presented and their relationship to the appraisal process.

- A) Classroom hours in excess of the curriculum requirement may be approved for elective credit. Such approval is limited to 9 excess hours for courses in a 30 hour curriculum requirement and 5 excess hours for courses in a 15 hour curriculum requirement;

- B) Excess hours may be approved, within the about limits based upon the Board's evaluation of the appraisal educational value of the excess hours.

## 4) Section 1455.210(c) was changed as follows:

- c) Pre-licensure courses shall be licensed for credit hours required by the curriculum; however, courses requiring a minimum of 30 hours may be approved as two 15 hour courses. Pre-licensure courses, licensed prior to July 1, 1998 having classroom hours in excess of the curriculum requirement and approved for elective credit, shall not be renewed to include the excess hours. Upon the expiration date of these courses, providers may apply for renewal of approved credit hours in the initial curriculum with the exception of the excess credit hours.

- 12) Have all the changes agreed upon by the agency and JCAR been made as indicated in the agreements issued by JCAR? Yes

- 13) Will this rulemaking replace an emergency rule currently in effect? Yes

- 14) Are there any amendments pending on this Part? No

- 15) Summary and Purpose of Rules: Effective July 1, 1998 the Real Estate Appraiser Licensing Act [225 ILCS 457] became effective. These Rules set forth definitions, license requirements, hearing procedures, and other administrative rules needed to implement the program.

- 16) Information and questions regarding these Adopted Amendments shall be directed to:

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William J. Brown Office of Banks and Real Estate  
 500 East Monroe Street, Suite 900  
 Springfield, Illinois 62701  
 (217) 782.3000 Fax (217) 524-5941

The full text of the Adopted Amendments begins on the next page:

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TITLE 68: PROFESSIONS AND OCCUPATIONS  
 CHAPTER VIII: OFFICE OF BANKS AND REAL ESTATE  
 PART 1455  
 REAL ESTATE APPRAISER CERTIFICATION

## SUBPART A: RESIDENTIAL AND GENERAL CERTIFICATION

Section	
1455.10	Definitions
1455.20	Uniform Standards of Professional Appraisal Practice/Supplemental Standards/Jurisdictional Exceptions
1455.30	Education and Experience Requirements for State Licensed Real Estate Appraiser
1455.40	Education Requirements for State Certified Residential and State Certified General Real Estate Appraiser
1455.50	Experience Requirements for Certified Residential and Certified General Real Estate Appraiser
1455.60	Application as a State Licensed Real Estate Appraiser, Certified Residential Real Estate Appraiser or Certified General Real Estate Appraiser
1455.70	Appraiser Examination
1455.80	Nonresident Licensure/Reciprocity/Examination Acceptance/Temporary Practice
1455.90	Change in Rank of Appraiser License
1455.100	Appraiser Continuing Education (CE)
1455.110	Appraiser License Renewals
1455.120	Term of Licensure
1455.130	Fees

## SUBPART B: APPRAISAL EDUCATION PROVIDERS/COURSES

Section	
1455.200	Appraisal Education Providers
1455.210	Pre-Licensure Course Curricula
1455.220	Continuing Education Course Curricula
1455.230	Appraisal Course Providers/Courses, Enforcement Procedures

## SUBPART C: APPRAISER ENFORCEMENT

Section	
1455.300	Appraiser Enforcement Procedures
1455.310	Informal Conferences
1455.320	Settlements

## SUBPART D: HEARINGS



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Section  
 1455.400 Applicability  
 1455.410 Institution of a Contested Case by the Agency  
 1455.420 Institution of a Contested Case by Petitioner  
 1455.430 Parties to Hearings  
 1455.440 Joinder  
 1455.450 Form of Papers  
 1455.460 Service  
 1455.470 Notice  
 1455.480 Representation  
 1455.490 Failure to Appear  
 1455.500 Amendment, Withdrawal of Complaints and Petitions for Hearing  
 1455.510 Requirement of an Answer  
 1455.520 Discovery  
 1455.530 Subpoenas  
 1455.540 Prehearing Conference  
 1455.550 Hearings  
 1455.560 Administrative Law Judges  
 1455.570 Disqualification of an Administrative Law Judge  
 1455.580 Examination by the Board  
 1455.590 Burden of Proof  
 1455.600 Motions  
 1455.610 Continuances  
 1455.620 Evidence

APPENDIX A Caption for a Case Filed by the Agency

APPENDIX B Caption for a Case Filed by the Petitioner

AUTHORITY: Implementing and authorized by the Real Estate Appraiser Licensing Act [P.A. 90-571, effective July 1, 1998].

SOURCE: Emergency rules adopted at 16 Ill. Reg. 16196, effective September 30, 1992, for a maximum of 150 days; rules adopted at 17 Ill. Reg. 1589, effective January 26, 1993; emergency amendment at 17 Ill. Reg. 6668, effective April 19, 1993, for a maximum of 150 days; amended at 17 Ill. Reg. 13494, effective July 30, 1993; amended at 18 Ill. Reg. 2379, effective January 28, 1994; emergency amendment at 18 Ill. Reg. 3006, effective February 10, 1994, for a maximum of 150 days; amended at 18 Ill. Reg. 8428, effective May 24, 1994; amended at 19 Ill. Reg. 9176, effective June 26, 1995; emergency amendment at 19 Ill. Reg. 12503, effective August 16, 1995, for a maximum of 150 days; amended at 19 Ill. Reg. 16604, effective December 1, 1995; amended at 20 Ill. Reg. 6488, effective April 30, 1996; recodified from Chapter VII, Department of Professional Regulation, to Chapter VIII, Office of Banks and Real Estate, pursuant to PA 89-23 and PA 89-508, at 20 Ill. Reg. 11984; amended at 21 Ill. Reg. 1685, effective January 27, 1997; amended at 21 Ill. Reg. 5538, effective April 18, 1997; emergency amendment at 21 Ill. Reg. 4132, effective February 4, 1998, for a maximum of 150 days; emergency amendment at 22 Ill. Reg. 8534, effective April 29, 1998, for a maximum of 150 days; Old Part repealed by emergency rulemaking at 22 Ill. Reg. 12979, effective July 1, 1998,

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for a maximum of 150 days; new Part adopted by emergency rulemaking at 22 Ill. Reg. 13011, effective July 1, 1998, for a maximum of 150 days; adopted at 22 Ill. Reg. 20813, effective NOV 20 1998.

## SUBPART A: RESIDENTIAL AND GENERAL CERTIFICATION

## Section 1455.10 Definitions

"Act" means the Real Estate Appraiser Licensing Act of 1998.

"Agency" means the Office of Banks and Real Estate.

"Appraisal" means an analysis, opinion or conclusion relating to the nature, quality, value or utility of specified interests in, or aspects of, identified real estate, for or in expectation of compensation. An appraisal may be classified by purpose into either a valuation or an analysis. A "valuation" is an estimate of the value of real estate or real property. An "analysis" is a study of real estate or real property other than estimating value.

"Appraisal Assignment" means an engagement for which an appraiser is employed or retained to act, or would be perceived by third parties or the public as acting, as a disinterested third party in rendering an unbiased analysis, opinion, or conclusion relating to the nature, quality, value, or utility of specified interests in or aspects of identified real estate. "Appraisal assignment" includes valuation work and analysis work.

"Appraisal Consulting" is the act or process of providing information, analysis of real estate data and recommendations or conclusions on diversified problems in real estate, other than estimating value.

"Appraiser" or "Real Estate Appraiser" means a person who performs appraisals.

"Appraiser Qualifications Board" or "AOB" is a Board of the Appraisal Foundation established by Title XI of the Federal Financial Institutions Reform, Recovery and Enforcement Act of 1989 (12 USC Chapter 34A).

"Appraisal Report" or "Report" means any communication, written or oral, of an appraisal, appraisal review, or consulting service that is transmitted to a client of a licensee.

"Appraisal Standards Board" or "ASB" is a Board of the Appraisal Foundation established by Title XI of the Federal Financial Institutions Reform, Recovery and Enforcement Act of 1989.

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"Appraisal Subcommittee" or "ASC" means the Federal Appraisal Subcommittee established by Title XI of the Federal Financial Institutions Reform, Recovery and Enforcement Act of 1989.

"Client" is the party or parties who engage an appraiser (by employment or contract) in a specific assignment.

"Commissioner" means the Commissioner of Banks and Real Estate.

"Conference Panel" is one or two members of the Board and the Director, or his/her designee, who convene in an informal conference with a Respondent who has written allegations filed against him/her, where Respondent may speak on his/her own behalf regarding allegations that have been charged against his/her appraiser license, which may result in a recommendation of an offer of settlement of the charges.

"Director" means the Director of the Real Estate Appraisal Administration Division of the Office of Banks and Real Estate.

"Division" means the Real Estate Appraisal Administration Division of the Office of Banks and Real Estate.

"Exam Acceptance" means the acceptance of an Appraiser Qualifications Board approved examination successfully completed in another state or jurisdiction and accepted as fulfilling the applicant's examination requirement in this State.

"Executive Conference" is a meeting between the Director and a Respondent who has written allegations filed against him/her, where Respondent may speak on his/her own behalf regarding allegations that have been charged against his/her appraiser license, which may result in a recommendation of an offer of settlement of the charges.

"Federal Financial Institutions Regulatory Agencies (FFIRA)" means the Board of Governors of the Federal Reserve System, the Federal Deposit Insurance Corporation, the Office of the Comptroller of the Currency, the Office of Thrift Supervision and the National Credit Union Administration.

"Federally Related Transaction" means any real estate related financial transaction that requires a licensed or certified real estate appraiser under federal law or regulation.

"Financial Institution" means a bank, savings bank, savings and loan association, credit union, mortgage broker, mortgage banker, licensee under the Consumer Installment Loan Act [205 ILCS 670] or the Sales Finance Agency Act [205 ILCS 660], or a corporate fiduciary, subsidiary, affiliate, parent company, or holding company of any such

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licensee.

"Hearings" means any hearings authorized to be held in the Division or before its Board or the Commissioner by the Real Estate Appraiser Licensing Act.

"Informal Conference" is a meeting among one or two members of the Board and the Director, or his/her designee, and a Respondent who has written allegations filed against him/her, where Respondent may speak on his/her own behalf regarding allegations that have been charged against his/her appraiser license, which may result in a recommendation of an offer of settlement of the charges.

"Informational Conference" is a meeting between the Director, or his/her designee, and a registrant with allegations filed against him/her, where the Director, or his/her designee, may question the Respondent in search of information and facts relative to the allegations.

"Mass Appraisal" is defined as the process of valuing a universe of properties as of a given date, utilizing standard methodology, employing common data and allowing for statistical testing and developed and reported in compliance with the USPAP Provisions and Standard 6.

"OBRE" or "Office" means the Office of Banks and Real Estate.

"Petitioner" is a party who by written petition or application seeks relief or licensure under any provision of applicable statutes of the State of Illinois or any rule, regulation, order or determination of the Division or Agency related to the Real Estate Appraisal profession.

"Pre-Renewal Period" is the time period between October 1 of any odd numbered year and September 30 of the subsequent odd numbered year. The pre-renewal period, for expired licenses, extends past September 30 of an odd numbered year to the date of application for renewal; however, the pre-renewal period may not extend past September 30 of the subsequent even numbered year.

"Rank" means the ranks of appraiser licensure: State Licensed, Certified Residential and Certified General.

"Real Estate" means an identified parcel or tract of land, including improvements, if any.

"Real Estate Appraisal Board" or "Board" means the Real Estate Appraisal Board established in the Act.

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"Real Estate Related Financial Transaction" means any transaction involving the sale, lease, purchase, investment in property or exchange of real property, or the financing of the real property; the refinancing of real property or interests in real property; or the use of real property or interests in property as security for a loan or investment, including but not limited to mortgage-backed securities.

"Real Property" means the interests, benefits and rights inherent in the ownership of real estate.

"Reciprocity" is acceptance of experience and educational qualifications for licensure in this State that have been accepted as the basis for licensure in a registrant's domicile state or jurisdiction. Licensure by reciprocity is only applicable when a reciprocity agreement exists between this State and another appraiser regulation jurisdiction.

"Registrant" or "Registered" refers to all ranks of appraisers registered with OBRE.

"Respondent" is a person, firm, association or corporation against whom a complaint or petition is filed or to whom an order or complaint is directed by the Agency initiating a proceeding.

"State Certified Residential Real Estate Appraiser" or "Certified Residential" means a real estate appraiser who holds: a license issued for that rank under Article 2 of the Real Estate License Act of 1983 before the effective date of the Act, a license issued under the Act upon application for examination received by OBRE before the effective date of the Act but issued after that date, or a license issued for that rank under the Act.

"State Certified General Real Estate Appraiser" or "Certified General" means a real estate appraiser who holds: a license issued for that rank under Article 2 of the Real Estate License Act of 1983 before the effective date of the Act, a license issued under the Act upon application for examination received by OBRE before the effective date of the Act but issued after that date, or a license issued for that rank under the Act.

"State Licensed Real Estate Appraiser" or "State Licensed" means a real estate appraiser who holds: an active license issued for that rank under Article 2 of the Real Estate License Act of 1983 before the effective date of the Act, a license issued under the Act upon application for examination received by OBRE before the effective date of the Act but issued after that date, or a license issued for that rank under the Act.

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"Uniform Standards of Professional Appraisal Practice" or "USPAP" means the Provisions and Standards of Professional Appraisal Practice as promulgated by the Appraisal Standards Board of the Appraisal Foundation, 1029 Vermont Avenue, NW, Suite 900, Washington, D.C. 20005. The 1998 USPAP, effective January 1, 1998 by the Appraisal Standards Board of the Appraisal Foundation is hereby incorporated by reference with no later amendments or editions.

### Section 1455.20 Uniform Standards of Professional Appraisal Practice/Supplemental Standards/Jurisdictional Exceptions

a) In addition to standards cited in Section 90 of the Act, the Uniform Standards of Professional Appraisal Practice (USPAP) as published by the Appraisal Standards Board in accordance with Section 110 of the Act, are adopted by reference.

b) Additional supplemental standards may be adopted by OBRE as recommended by the Board and, if adopted, shall become a part of this Section.

1) A registrant whose appraiser license, in any rank, is suspended by the provisions of the Act, and/or this Part, may not practice the business of real estate appraisal during the suspension period. Participation in the development and/or reporting of appraisals, appraisal reviews or appraisal consulting as a registered or nonregistered appraiser during the suspension period shall be sufficient grounds for OBRE to revoke or otherwise discipline the registrant's active or inactive license.

2) A registrant whose appraiser license, in any rank, is placed on probation under the provisions of the Act, and/or this Part, shall include in the certification of all appraisal reports a statement that "this license (number and State rank) has been placed on probation by OBRE until (date probation terminates)".

3) An appraiser registered with OBRE, under the Act, shall reject solicitation for appraisal work that suggests contingent fees. A fee for appraisal services that is increased, decreased or void based upon the closing of a loan is a form of contingent fees.

c) Real Estate Appraisers registered with OBRE under the Act shall practice in accordance with USPAP standards except:

1) where the standard(s) is contrary to Illinois Law or public policy (USPAP, Jurisdictional Exception); or

2) where supplemental standards have been recommended by the Real Estate Appraisal Board, adopted by OBRE and incorporated by rule as part of this Section. Any such supplemental standard(s) shall not diminish the purpose, intent or content of the requirements of the USPAP.

d) A copy of the USPAP is available for inspection in OBRE and may be purchased, if available, at cost from the Office of Banks and Real Estate, Division of Real Estate Appraisal Administration, 500 East Monroe Street, Suite 500, Springfield IL 62701 or from the Appraisal



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Standards Board, 1029 Vermont Avenue, N.W., Suite 900, Washington D.C. 20005-3517.

### Section 1455.30 Education and Experience Requirements for State Licensed Real Estate Appraiser

a) Education. An applicant for State Licensed Real Estate Appraiser shall have earned a high school diploma or its equivalent (GED) and shall have completed 75 hours of appraisal course work in three specific curricula that are mandatory.

- 1) The specific 3 curricula are:
  - A) Standards of Professional Appraisal Practice--15 hours (IL-I);
  - B) Basic Principles of Appraisal--30 hours (IL-II); and
  - C) Single Family Appraisal/Residential Valuation Procedures--30 hours (IL-III).

2) Credit will be awarded only from courses licensed by OBRE and presented by course providers licensed by OBRE. Successful completion is attendance of a minimum of 90% of all classroom instruction and passing the course examination.

b) Experience. Experience credit is not required for an applicant to sit for examination or for licensure; but, 500 hours of appraisal experience is required for the first and second renewals of a license following an original issue date of 24 months or longer.

1) Documentation of the 500 hours of experience for each of the two reporting periods shall be submitted on forms provided by OBRE as described in Section 1455.60 of this Part:

A) Experience documentation supporting 500 hours or 1,000 hours may be submitted with the application for examination or at any time between the date of license issuance and the first renewal after the original license has been issued for a period of 24 months or longer.

B) If during the first reporting period the registrant did not submit documentation of 1,000 hours of experience, the second experience report shall document 500 hours of experience that was obtained from appraisal work occurring subsequent to the renewal that required the first 500 hours.

2) Only those appraisal reports that are in compliance with the USPAP Provisions and Standards are creditable as experience.

3) The experience is directly related to performing or reviewing appraisals, in compliance with the USPAP Provisions and Standards 1 and 2, or 3, or 4 and 5.

A) Salespersons and brokers who hold an active license, issued by OBRE, at the date of application for appraiser licensure, that has been active and in good standing for 5 of the preceding 7 years, will be granted 40% of the experience requirement.

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B) OBRE may require a fee to verify the active and good standing status of the license.

4) Mass appraisal experience is not acceptable experience for this appraiser rank.

5) A license may be renewed based upon the applicant's certification that an appraisal log is true, accurate and contains listings of reports meeting the USPAP Provisions and Standards. If, after the renewal license is issued, it is determined, by experience audit or other investigation, that the experience is not true, accurate and/or in compliance with the USPAP Provisions and Standards, such determination shall be grounds to revoke or otherwise discipline the renewed license or up-ranks to the license.

6) The experience requirement may be waived (or deferred) by the Commissioner, upon recommendation of the Board, in accordance with Section 60(g) of the Act.

### Section 1455.40 Education Requirements for State Certified Residential and State Certified General Real Estate Appraiser

a) An applicant for certification as a Certified Residential or Certified General Real Estate Appraiser shall have earned a high school diploma or its equivalent (GED) and shall have completed a course of study in appraisal curricula as set forth in subsections (b), (c) and (d) of this Section.

b) A total of 120 hours of education is required for Certified Residential Real Estate Appraiser, and 180 hours of education are required for Certified General Real Estate Appraiser.

1) For Certified Residential Real Estate Appraiser, the following specific hour requirement is mandatory:

- A) Standards of Professional Appraisal Practice--15 hours (IL-I);
- B) Basic Principles of Appraisal--30 hours (IL-II);
- C) Valuation Procedures for Residential Property--30 hours (IL-III);
- D) Valuation Procedures for Nonresidential Property--30 hours (IL-IV); and
- E) Residential Report Writing--15 hours (IL-VI).

2) For Certified General Real Estate Appraiser, the following specific hour requirement is mandatory:

- A) Standards of Professional Practice--15 hours (IL-I);
- B) Basic Principles of Appraisal--30 hours (IL-II);
- C) Valuation Procedures for Residential Property--30 hours (IL-III);
- D) Valuation Procedures for Nonresidential Property--30 hours (IL-IV);
- E) Income Capitalization Approach--30 hours (IL-V);
- F) Non-residential Report Writing--15 hours (IL-VII); and

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- c) Elective Courses--30 hours (IL-E). Credit will only be awarded for courses licensed by OBRE and presented by course providers licensed by OBRE. Successful completion is attendance of a minimum of 90% of all classroom instruction and passing the course examination.
- d) Education credit may be earned by teaching courses licensed by OBRE Real Estate Appraisal Administration and presented through an OBRE licensed provider. To obtain education credit for teaching, the applicant shall provide verification from the education provider of the date, place of presentation and the course name and license number.
- 1) One hour of education credit for every one hour of classroom instruction shall be awarded.
  - 2) Education credit for teaching shall be awarded for only one presentation from each curriculum (IL-I through IL-VII) and for one presentation of each different course in IL-E curriculum.

## Section 1455.50 Experience Requirements for Certified Residential and Certified General Real Estate Appraiser

- a) To be eligible to sit for the appraisal examination for State Certified Residential Real Estate Appraiser, an applicant must submit proof of 2,500 hours of appraisal experience that has occurred over a minimum of two calendar years, and the applicant for State Certified General Real Estate Appraiser must submit proof of 3,000 hours experience that has occurred over a minimum of two calendar years. Experience requirements pertain to both time and hours; therefore, a maximum of 50% of the experience will be credited for appraisal work conducted during any calendar year.
- b) Approved experience may include fee appraisal, staff appraisal, mass appraisal, ad valorem tax appraisal, mass ad valorem appraisal, review appraisal or appraisal analysis, highest and best use analysis, feasibility analysis or study, real estate sales and brokerage, real estate counseling and real property management. Only appraisal work that is in compliance with the USPAP Provisions and Standards is creditable experience.
- c) For Certified Residential, a minimum of 50% (1,250 hours) of the requirement must be experience relating to residential property. For Certified General, a minimum of 50% (1,500 hours) of the requirement must be experience relating to non-residential property. Hours shall be awarded for various types of appraisal as follows:
  - 1) Experience for Residential Type Reports:
    - A) 5 hours -- Vacant building site for residential property of less than 5 units; and
    - B) 15 hours -- Residential property with improvements of less than 5 living units.
  - 2) Experience for Non-Residential Type Reports:
    - A) 30 hours -- Vacant building site for non-residential

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- property (including multi-family residential with highest and best use of more than 4 units);
- B) 40 hours -- Improved commercial, industrial, office property with less than 10,000 SF and apartment property of 5-24 units;
  - C) 50 hours -- Improved commercial, industrial, office property with more than 10,000 SF and apartment property with more than 24 units;
  - D) 40 hours for vacant operating agriculture property; and
  - E) 50 hours for improved operating agriculture property.
- 3) Appraisal type is determined by highest and best use as indicated in the appraisal report.
- d) Real estate sales and brokerage experience shall be accepted if:
    - 1) Salespersons and brokers who hold an active license, issued by OBRE, at the date of application for appraiser licensure renewal, that is and has been active and in good standing for 5 of the preceding 7 years, will be granted 40% of the experience requirement. OBRE may require a fee to verify the active and good standing status over the past 7 years.
    - 2) The balance of experience (60%) must be reported to the Agency in accordance with Section 1455.60(b)(2)(A) of this Part and must be directly related to performing or reviewing appraisals, in compliance with the USPAP Provisions and Standards 1 and 2, or 3, or 4 and 5.
  - e) Real Estate Counseling experience shall be awarded if it is in compliance with the USPAP Provisions and Standards 4 and 5.
  - f) Real Property Management experience shall be accepted if the experience is directly related to performing or reviewing appraisals, in compliance with the USPAP Provisions and Standards 1 and 2, or 3, or 4 and 5.
  - g) Experience for mass appraisal, ad valorem tax appraisal and mass ad valorem appraisal shall be documented by the applicant's affidavit detailing the experience credit being requested, and shall be certified by the assessment official in accordance with Section 60(b) of the Act. Acceptable experience includes:
    - 1) experience through the cost, income and market sale appraisal techniques must be in compliance with the USPAP Provisions and Standards 1 and 2;
    - 2) experience through model development and calibration in relation to mass ad valorem tax assessments must be in compliance with the USPAP Provisions and Standard 6;
    - 3) experience through the review and analysis of appraisals employing the cost, income and market sale techniques must be in compliance with the USPAP Provisions and Standard 3.
- A) OBRE may require samples of the requested experience to corroborate the experience and its compliance to the USPAP Provisions and Standards.
  - B) The Director may seek the recommendation of the Board as to

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the validity of the experience.

**Section 1455.60 Application as a State Licensed Real Estate Appraiser, Certified Residential Real Estate Appraiser or Certified General Real Estate Appraiser**

- a) An applicant for examination as a real estate appraiser in any rank shall file an application with OBRE on forms provided by OBRE. The application shall expire one year from the date of submission, i.e., the applicant must have passed the examination and applied for licensure within one year after submission of the application for examination.
- b) The application shall include but not be limited to the following:
  - 1) Verification of education (i.e., transcripts, certificates of course completion, official records from provider);
  - A) a certification that the applicant is a high school graduate or equivalent. Proof of education may be required by post audit of the application; and
  - B) proof of successful completion (transcripts, course completion certificates, official school records, etc.) of the appraisal education required by Sections 1455.30 and 1455.40 of this Part.
- 2) Verification of experience. All experience for the Certified Residential and Certified General Real Estate Appraisers shall meet the requirements as set forth in Section 1455.50 of this Part.

A) In accordance with Section 60(a) of the Act, the applicant shall submit an appraisal log that shall include an address or location of the property; date of the appraisal report; property type; size of the property improvements including land area; the tally of the hours being requested by the applicant; a certifying statement that the applicant's signature appears on a certificate of appraisal that was transmitted with the appraisal report; and a certifying statement that the appraisal work listed will be available for OBRE audit for a period of five years from the date of the application.

B) An applicant seeking credit for mass appraisal experience shall include with the application his/her affidavit as prescribed in Section 60(b) of the Act. The affidavit shall detail the experience being requested by the applicant and provide the following minimum information:

- i) the boundaries of the mass ad valorem tax appraisal/assessment project;
- ii) the number of parcels included in the mass ad valorem appraisal/assessment project;
- iii) the types of property (residential, commercial, industrial) included in the project and the percentage

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- ratio of each type; the time period in which the mass ad valorem tax appraisal/assessment took place (the mass appraisal process);
- v) the number and type (residential or nonresidential) of properties valued (the analysis and establishment of values) through the cost, income and market sale appraisal techniques (the appraisal process);
- vi) the number and type (residential or nonresidential) of reviews and analyses of appraisals employing the cost, income and market sale appraisal techniques (the review appraisal process);
- vii) the specific address where records pertaining to such mass ad valorem tax appraisals/assessments, ad valorem appraisals or appraisal reviews are filed; and
- viii) a certification, in accordance with Section 60(b) of the Act.

C) An applicant seeking 40% of the experience requirement, as provided by Section 60(c) of the Act, for experience attained as an Illinois real estate salesperson or broker licensee shall:

- i) request the 40% credit on forms provided by OBRE upon which the applicant shall certify that he/she has maintained an active, good standing Illinois real estate salespersons or brokers license for 5 of the 7 years preceding the date of application for real estate appraiser;
- ii) disclose the real estate sales or brokers license number(s) and date(s) of issuance;
- iii) log the balance of the experience (60%) as prescribed in subsection (b)(2)(A) of this Section; and
- iv) attach a check (licensure verification fee) in the amount indicated in Section 1455.130 of this Part as the cost to verify the license(s) and status.

3) The required application fees provided for in Section 1455.130 of this Part are not refundable.

4) Certification from the state or territory of the United States or the foreign country in which the applicant was originally licensed as a real estate appraiser and any jurisdiction in which the applicant is currently licensed as a real estate appraiser, if applicable, stating:

- A) the time during which the applicant was licensed; and
- B) whether the file of the applicant contains any record of any disciplinary actions taken or pending.

c) When the accuracy of any submitted documentation or the relevance or sufficiency of the documentation, including, but not limited to, course work or experience, is questioned by OBRE, or if there is a lack of information, discrepancies, or conflicts in information, or a



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need for clarification, the applicant seeking licensure shall:

- 1) provide such information as may be necessary;
- 2) appear for an interview before the Board or the Director to explain such relevance or sufficiency, clarify information, or clear up any discrepancies or conflicts in information.

Failure to provide such information, clarification, etc. shall be sufficient grounds to deny the license application.

- d) Upon receipt of the application and all supporting documentation, the applicant's file will be evaluated by OBRE. The applicant will be notified in writing of approval to sit for the examination or the reasons the application has been deferred or denied.

- e) After successful completion of the appropriate examination, an applicant for issuance of a certificate as an appraiser in any rank shall attest, by his/her signature, to the certifications on forms provided by OBRE and shall attach the initial registry fee as indicated in Section 1455.130 of this Part. The fee is not refundable.

**Section 1455.70 Appraiser Examination**

- a) To be eligible for licensure in any appraiser rank, the applicant must pass an examination administered by OBRE or its designated testing service. The examination will cover the content of the National Uniform Examination and be approved by the Appraiser Qualifications Board.

- b) The passing score on the examination shall be a cut score of 75.

- c) OBRE shall accept the examination results of an Illinois appraisal candidate who has passed the examination for certification or licensure in another jurisdiction under the following conditions:

- 1) The examination has been approved by the Appraiser Qualifications Board.
- 2) The examination taken in another jurisdiction can only be applied toward an Illinois equivalent appraisal rank. If there is no equivalent rank, the examination would not be accepted.
- 3) The applicant must provide an official test score report from the testing entity, or a certification by the jurisdiction where the applicant sat for the examination and was subsequently licensed.
  - i) The applicant is responsible for obtaining the score report from the testing entity or jurisdiction and paying fees to obtain the report, or for securing a certification from another jurisdiction and paying any fees required.
  - ii) OBRE will not accept or apply the test results until such time as the applicant is notified of having met all other requirements for licensure or certification in Illinois.
  - iii) OBRE will not issue a license or certificate until all required fees are paid in full.

**Section 1455.80 Nonresident Licensure/Reciprocity/Examination Acceptance/**

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**Temporary Practice**

- a) A nonresident may be licensed, by an examination process under the Act, upon complying with all the provisions, conditions and requirements for licensure in this State and upon payment of application and licensure fees.

- b) A nonresident may be licensed by reciprocity under the Act, upon complying with all the provisions of a reciprocity agreement between this State and any other appraiser regulation authority that is in compliance with the requirements of the FIRTA, Title XI, and upon payment of application and licensure fees.

- 1) A reciprocity agreement between this State and other appraiser regulatory jurisdictions may be entered into upon the recommendation of the Board and the concurrence by the Commissioner.

- 2) The Board shall not recommend such agreements with jurisdictions that do not have similar, equal or greater licensure qualification requirements.

- 3) A reciprocal license becomes invalid when the licensee changes his/her residence to Illinois or any other state.

- c) A nonresident may be licensed by examination acceptance under the Act, upon certification from the state or territory where the applicant passed the examination, and that the examination was approved by the Appraiser Qualifications Board.

- 1) The applicant shall be responsible for obtaining such certification, including associated costs.

- 2) The examination must have been passed within seven years preceding the date of application by Reciprocity.

- d) Every nonresident shall file with his/her application a supporting document form provided by OBRE, upon which each nonresident applicant shall disclose any and all information deemed necessary by the Director, which shall include, but not be limited to, an irrevocable consent to legal service upon the Director, as provided in Section 70(c) of the Act.

- e) Any discipline, disciplinary proceeding, or unresolved complaint against an out-of-state applicant for licensure in this State shall be sufficient grounds for the Commissioner to deny license to such applicant in this State.

- f) Nonresident Temporary Practice. A nonresident who holds an active appraiser license, in good standing in another jurisdiction, may apply to OBRE and receive a temporary practice permit to appraise real property in this State. The information submitted on the application shall include, but not be limited to, the following:

- 1) the applicant's name, address, social security number, and any other such information as might be necessary to identify the applicant;
- 2) a certification from the agency in the applicant's home state, certifying that the applicant is a duly licensed real estate

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appraiser, in good standing, the rank of licensure, and setting forth any discipline taken (or pending) by the agency against the applicant;

- 3) An estimate of the amount of time required to perform the appraisal assignment(s) and a description of the property(s) and their general location (city, county, etc.) to be appraised by the applicant;
- 4) An irrevocable consent that service of process in any action against the applicant that may arise from the applicant's Illinois appraisal activities may be made by delivery of process on the Director; and
- 5) Such other information as may be necessary to determine the applicant's eligibility for temporary appraisal privileges within the State of Illinois.

A) The temporary practice permit shall be for a period of 60 days from the date of issuance. The permit may not be renewed but may be extended for 30 days upon written request and payment of an extension fee, at least 14 business days prior to the expiration of the original temporary practice permit.

B) Each applicant is limited to two temporary appraisal practice permits in any calendar year.

C) The permit shall be valid only for the properties and locations indicated on the application, and the appraisal of other properties or properties in other locations will be considered by OBRE as a false statement on an Agency application and sufficient cause to discipline the licensee.

D) Persons granted temporary appraisal practice permits shall not advertise, solicit or otherwise represent themselves as a State Licensed Real Estate Appraiser, Certified Residential Real Estate Appraiser or Certified General Real Estate Appraiser.

E) Applicants will be required to pay any fee required by the Federal government under FFIRA, Title XI.

## Section 1455.90 Change in Rank of Appraiser License

An appraiser registered with OBRE may apply to change his/her license to a higher or lower rank by filing the appropriate application, meeting all license requirements, and paying all fees in effect at the time of application for the higher or lower rank. An appraiser may not hold an active license in more than one rank.

- a) Upon the issuance of a license to an appraiser at a higher or lower rank, the term of the appraiser's previous license shall end.
- b) Any actions by OBRE relating to allegations, complaints, investigations, prosecutions, discipline, supervision, or sanctions pursuant to the Act or this part that apply to an individual holding an appraiser license shall continue to apply to the individual

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regardless of what rank of appraiser licensure the individual has held, is holding, or may hold in the future.

## Section 1455.100 Appraiser Continuing Education (CE)

a) All State Licensed Real Estate Appraisers registered with OBRE under the Act shall obtain, during the pre-renewal period, a minimum of 20 hours of continuing education, and all State Certified Residential and General Real Estate Appraisers registered with OBRE under the Act shall obtain, during the pre-renewal period, a minimum of 28 hours of continuing education. The continuing education shall be earned by attending OBRE CE courses licensed in 4 different curricula (IL-CE-I through IL-CE-IV) as outlined in Section 1455.220 of this Part, or by attending OBRE approved pre-licensure appraiser courses.

1) Credit will not be awarded for repetitious course work (i.e., credit will only be given once for a course attended more than once during the same pre-renewal period).

2) A minimum of 7 hours of CE pertaining to USPAP shall be completed prior to every third renewal of an appraiser license. OBRE may require certificates of completion for these courses at the renewal date for which they are due. These courses are listed on OBRE's course catalog under the IL-CE-III curriculum. Pre-licensure courses in the IL-I curriculum will also satisfy this requirement.

3) A minimum of 3 hours of CE pertaining to Fair Housing/Fair Lending shall be completed prior to every third renewal of an appraiser license. OBRE may require a certificate of completion for this course at the renewal date for which it is due. These courses are listed on OBRE's course catalog under the IL-CE-IV curriculum.

4) CE credit will be awarded to appraisers who attend a qualifying course in curricula IL-CE-I through IL-CE-IV regardless of whether they take or pass an examination given in connection with the course.

5) An applicant for renewal is not required to meet CE requirements for a license issued less than 24 months prior to its expiration.

A) The 24 month period pertains to the original issue date of a license in any rank; e.g., a licensee who has changed rank is not exempt from CE because the change in rank occurred less than 24 months prior to September 30 of an odd numbered year.

B) A State Licensed Real Estate Appraiser, registered with OBRE, applying for a rank change on or after July 1 of any odd numbered year shall have obtained and must document 20 hours of CE prior to the issuance of the new license.

C) A Certified Residential or Certified General Real Estate Appraiser, registered with OBRE, applying for a rank change on or after July 1 of any odd numbered year shall have

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obtained and must document 28 hours of CE prior to the issuance of the new license.

- 6) Real estate appraisers licensed in Illinois but residing in another state or jurisdiction shall comply with the CE requirements as set forth in this Section except where the license was issued by reciprocity and the reciprocity agreement provides for a different CE requirement; however, the nonresident registrant is not exempted from mandatory CE required for all Illinois appraiser registrants.

- 7) In lieu of meeting the CE requirement by attending OBRE approved courses, all or any part of the CE requirement may be satisfied by:

- A) teaching pre-licensure or CE courses licensed by OBRE and sponsored by a provider licensed by OBRE. The instructor will be awarded CE credit for the number of hours for which the course is licensed. CE credit will be awarded for only one presentation of a course (repetitious course work is not acceptable). Credit is only applicable to the renewal following the pre-renewal period in which the course was taught; and

- B) participating in the development of a course(s) licensed by OBRE. CE credit will be awarded only once for development of a course. Credit is only applicable to the renewal following the pre-renewal period in which the course was developed.

- b) Successful CE course completion is a minimum of 90% attendance of all course instruction.

- 1) CE course providers must certify the CE to OBRE within 21 days after each course presentation and OBRE will credit the registrant's record.

- 2) Pre-licensure courses taken for CE credit must be submitted to OBRE by the registrant as soon as the course certificate is issued, and OBRE will credit the registrant's record. Otherwise, documentation of the CE credit must be attached to the renewal application.

- c) Real estate brokers and salespersons who are also registered as a real estate appraiser will be granted, by reciprocity, 25% of the CE hours required for the rank of license held at date of renewal, provided that:

- 1) the broker or salesperson license was renewed during its preceding renewal period;
- 2) the current broker or salesperson license is active and in good standing at the time of the appraiser license renewal;
- 3) the renewal of the broker or salesperson license required a minimum of 12 hours of CE in the preceding renewal period;
- 4) the appraiser renewal applicant requests the 7 hours CE credit and pays a fee as indicated in Section 1455.130 of this Part as the cost of verifying the broker or salesperson license status.

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## Section 1455.110 Appraiser License Renewals

- a) Every appraiser license registered with OBRE shall, unless terminated earlier by provisions of this Part or the Act, expire on September 30 of each odd-numbered year. The holder of a license may renew the license or certification during the months of July, August and September preceding the expiration date by completing an application provided by OBRE, meeting all renewal requirements and paying the required fee specified in Section 1455.130 of this Part.

- 1) On or after July 1 and before September 30 of odd numbered years OBRE will provide each appraiser registrant, by mail at his/her last known address, a renewal application. The application shall indicate the requirements for renewal and must be completed in its entirety by the renewal applicant.

- A) The notice of renewal application is provided as a convenience to the registrant.

- B) The lack of notice of renewal application by OBRE shall not be grounds for the applicant to avoid penalties or disciplinary sanctions resulting from appraisal practice on a non-renewed license.

- 2) In order to renew an appraiser license, the renewal applicant will be required to comply with the CE requirements pursuant to Section 85 of the Act and Section 1455.100 of this Part.

- b) A license due to expire or which has been expired for less than one year, under the rank of State Licensed Real Estate Appraiser, may be renewed by providing evidence of completion of experience as required by Section 60(f) of the Act, evidence of 20 hours of CE course work, and by payment of renewal fees as set forth in Section 1455.130 of this Part.

- 1) A State Licensed Real Estate Appraiser license that has been expired for 2 to 3 years, may be renewed by meeting the experience provisions in Section 60(f) of the Act, by evidence of 20 hours of CE, and by payment of the renewal fee and late penalty; however:

- A) 20 hours of CE must have been completed during the 24 months immediately preceding the date of renewal application; and

- B) any required experience must be from appraisal work occurring after any experience earlier reported.

- 2) A State Licensed Real Estate Appraiser license that has been expired for more than 3 years shall not be renewed. The licensee may reapply for licensure by meeting the qualifying criteria in effect at the date of application, including re-examination.

- c) A license due to expire or that has been expired for less than one year under the ranks of State Certified Residential Real Estate Appraiser or State Certified General Real Estate Appraiser may be renewed by meeting the provisions of Section 1455.100 of this Part, and by paying the renewal fee and late penalty fee as prescribed in Section 1455.130 of this Part.



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- 1) A license in the rank of State Certified Residential or State Certified General Real Estate Appraiser that has been expired for 2 to 3 years may be renewed by meeting the provisions of Section 1455.100 of this Part and payment of the renewal fee and late penalty; however, the required 28 hours of CE must have been completed during the 24 months immediately preceding the date of renewal application; and
- 2) A license as a State Certified Residential or State Certified General Real Estate Appraiser that has been expired for more than 3 years shall not be renewed. The licensee may reapply for a license by meeting the qualifying criteria in effect at the date of application including re-examination.
- d) The holder of a license as a State Licensed, Certified Residential or Certified General Appraiser that is expired for a period of less than 3 years may renew the license or certificate in accordance with the provisions of this Section; however, licensees may not reapply for a license in the same appraiser rank as the expired license until the license has been expired for more than 3 years.

## Section 1455.120 Term of License

In accordance with Section 65 of the Act, the term of license for all appraiser ranks shall be from the date of issuance to September 30 of each odd numbered year.

- a) An appraiser license in any rank originally issued between July 1 and September 30 of each odd numbered year shall be valid past September 30 of that year and expire on September 30 of the subsequent odd numbered year; i.e., the license will be valid for a period of 24 months to 27 months, unless terminated earlier by the provisions of the Act or this Part.
- b) An appraiser license that has expired, or that has been surrendered, suspended, or revoked, is considered inactive. An appraiser with an inactive appraiser license may continue to appraise real property; however, he/she may not represent himself/herself as an Illinois licensed appraiser in any rank. The inactive licensee is further prohibited from representing himself/herself as having been licensed in any rank as a real estate appraiser. Such representations constitute a violation of Sections 90 and 95 of the Act and a violation of the USPAP, Ethics Provision.
  - 1) A complaint against an inactive licensed appraiser who has not represented himself/herself as a licensed appraiser in any rank is outside the authority of OBRE if the alleged violations occurred during a time when the licensee was inactive.
  - 2) A complaint against an inactive licensed appraiser will be deferred if it is determined that the appraisal for which the complaint was filed was developed and reported by the inactive appraiser without reference to a State appraiser rank or number.
    - A) The inactive licensed appraiser's file will be flagged with

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an intent to investigate in the event that the registrant applies to renew the license, up-rank or down-rank the license or reapply for licensure in any rank.

- B) At the time of such application for renewal, for change to higher or lower rank, or application for new licensure in any rank, OBRE shall defer the consideration of the application until an investigation can be completed. The renewal applicant will be notified of the deferment, which shall not exceed 120 days. At that time, if the investigation indicates possible violations of the Act, OBRE, with a recommendation of a Board Conference Panel, may deny the application and notify the applicant of his/her rights of due process.

## Section 1455.130 Fees

- a) Appraiser Application Fees
  - 1) The application fee for licensure as a State Licensed Real Estate Appraiser (whether by examination, examination acceptance, or reciprocity) is \$175.
  - 2) The application fee for licensure as a Certified General or Certified Residential Real Estate Appraiser (whether by examination, examination acceptance, or reciprocity) is \$175.
  - 3) The initial registry application fee for all appraiser ranks is \$75.
  - 4) The fee for application for a temporary practice permit is \$100.
  - 5) The application fee for extension of a temporary practice permit is \$100.
- b) Appraiser Renewal Fees
  - 1) The fee for renewal of an active appraiser license is \$450.
  - 2) The fee for renewing an expired appraiser license is (\$450 renewal + \$100 late penalty) \$550.
- c) Application/Renewal Fees for Appraiser Education Providers
  - 1) The fee for application as a real estate appraiser education provider shall be \$1000, plus necessary course approval fees as set forth in subsection (d) below.
  - 2) The fee for renewal as an approved real estate appraiser education provider shall be \$500.
  - 3) The fee to renew an appraiser education provider license that has been expired for less than 61 days shall be \$600. After 61 days the license cannot be renewed, but the applicant can apply for a new license.
- d) Application/Renewal Fees for Pre-licensure Courses and CE Courses
  - 1) The application fee for a pre-licensure course license is \$500.
    - A) The fee for renewal of a pre-licensure appraisal course license is \$250.
    - B) The fee for renewal of a pre-licensure appraisal course that has been expired for less than 366 days is \$350. After 366

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days the license cannot be renewed, but the applicant can apply for a new course license.

- 2) The application fee for a CE course license is \$300.
  - A) The fee to renew a CE course license is \$150.
  - B) The renewal fee for a licensed CE course that has been expired for less than 366 days is \$250. After 366 days the license cannot be renewed, but the applicant can apply for a new course license.
- 3) The fee for evaluation of revisions for licensed courses is \$200 for pre-licensure courses and \$75 for CE courses.
- e) General
  - 1) All fees paid pursuant to the Act and this Section are non-refundable.
  - 2) Applicants for examination and re-examination for appraiser licensing shall pay a fee covering the cost of providing such examination. If a designated testing service is utilized for the examination, such fee shall be paid directly to the designated testing service.
  - 3) The fee for certification of a registrant's record (e.g., license status, examination information, discipline, etc.) is \$25.
  - 4) There is no fee for license verification.
  - 5) The fee for issuance of a duplicate license or certification or replacement of a lost license or certification is \$25.
  - 6) The fee for a license with name and/or address change (other than name and/or address change at renewal) is \$25.
  - 7) The fee for a decorative wall certificate is \$25.
  - 8) The fee for a roster of persons licensed under the Act is \$40 for a registrant listing or \$55 for printed labels, which shall include the name, address, city, state, and zip code of each licensee.
  - 9) The fee for requesting a waiver of the real estate appraiser experience requirement pursuant to Section 60(g) of the Act shall be \$25.
  - 10) The fee for furnishing a record of proceedings is \$1 per page of the record.
  - 11) National Registry fees payable to the Appraisal Subcommittee pursuant to federal regulations and laws shall be paid by OBRE from funds appropriated by the General Assembly from the Appraisal Administration Fund.
  - 12) The fee to verify the existence and status of a brokers or salesperson license for granting reciprocal CE is \$20.
  - 13) The fee to verify the existence and status of a broker or salesperson license for granting experience for appraiser licensure is \$25.

SUBPART B: APPRAISAL EDUCATION PROVIDERS/COURSES

## Section 1455.200 Appraisal Education Providers

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a) An entity seeking licensure as an appraisal education provider shall submit an application, on forms provided by OBRE, upon which they must certify and promise that they now meet (and will maintain) the following minimum criteria:

- 1) maintain a fixed office that is adequate for the maintenance of all records, office equipment, files, telephone equipment and office space necessary for customer service;
- 2) administer a mandatory final examination for each pre-licensure course offering;
- 3) provide each student, within 21 days after completion of each course (or within 21 days after a request by a student or OBRE), a certification of completion, transcript or other document verifying hours of attendance and successful course completion and identifying the course by name and number, if any. In addition, such certificate, transcript or other document shall indicate the provider's address and telephone number and the location and date of the course, and shall include an authorized signature of the course provider's representative;
- 4) comply with all applicable fire, building, zoning, health, safety and accessibility codes and standards pertaining to the premises, equipment and facilities of the course site;
- 5) provide the student with information that specifies the course of study to be offered, the tuition to be charged, the school's policy regarding refund of unearned tuition when a student is dismissed or withdraws voluntarily or through hardship, any additional fee to be charged for supplies, materials or books that become the property of the student upon payment, and such other matters as are material to the relationship between the school and the student (e.g., cost of retaking a course, current status of licensure, any disciplinary action taken by OBRE and attendance requirements);
- 6) maintain for each student a record that includes the course of instruction undertaken, dates of attendance, and areas of study completed satisfactorily. Each student's record shall be maintained by the school for a period of at least 7 years and shall be available for inspection by the student or by OBRE or its designee during regular business hours; and
- 7) within 21 days after completion of each CE course presentation, the provider shall certify to OBRE a roster of all duly registered students. The roster shall be on forms provided by OBRE and shall include:
  - A) the CE course license number;
  - B) the license number of the provider;
  - C) the date(s) and location of the CE presentation;
  - D) the name of the instructor(s);
  - E) a listing of students by full name, appraiser license number, social security number and an indication that the student did or did not attend a minimum of 90% of the course

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- (the names shall be listed in alphabetical order):
- F) the authorized signature of a representative of the provider; and
  - G) the roster form must be stamped, using the personalized stamp provided to the provider by OBRE.
- 8) Employ competent instructors.
- A) Instructors for courses in the IL-IV, IL-V and IL-VII curricula shall be Certified General Real Estate Appraisers or full time faculty members of a 4-year college or university.
  - B) Instructors for courses in the IL-I, IL-II, IL-III and IL-VI curricula shall be Certified Residential or Certified General Real Estate Appraisers or full time faculty members of a 4-year college or university.
  - C) For CE courses and courses in the IL-E curriculum, instructors should be persons with education and experience in appraisal and/or the subject matter of the course.
  - 9) Approved course providers shall not advertise as being endorsed, recommended or accredited by OBRE. Course providers may indicate that the provider and course of study have been approved or is pending approval by OBRE.
  - 10) Illinois Colleges and Universities that apply as appraisal education providers under this Section shall be accredited by the regional accrediting body and offer either or both an associate's and baccalaureate degree program.
- b) Fee Exemption. OBRE shall approve and issue a license to any entity who certifies to the above criteria on an application form provided by OBRE. The application shall be accompanied by the application fee as provided in Section 1455.130 of this Part. The following entities are exempt from the fees:
- 1) Illinois Colleges and Universities accredited by the regional accrediting body and who offer either or both an associate's and baccalaureate degree program will not be required to pay the application fees.
  - 2) Agencies under the jurisdiction of the Governor of the State of Illinois will not be required to pay the application fees.
- c) Sub-organizations (such as chapters, branch schools and local associations) may apply to OBRE for licensure as an appraisal education sub-provider. The application must certify that the office is licensed under the appraisal education provider's license of the parent organization. Sub-providers may apply for licensure for CE courses but may not seek licensure for pre-licensure appraisal courses. The applicant for a sub-provider license shall certify on forms provided by OBRE that:
- 1) the sub-organization is an authorized affiliate of the parent organization;
  - 2) the sub-organization certifies to and promises to abide by and maintain the qualifying criteria provided in subsections (a)(3)

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- through (8) of this Section;
- 3) the parent organization will review and approve any course submitted for licensure, or that the parent organization will award credit for the course within their designation program;
  - 4) the license of the parent organization may not be jeopardized or disciplined as a result of the actions of the sub-provider, but that the courses licensed under the sub-provider's license may be revoked as a result of violation of any of the application covenants;
  - 5) each CE course sub-provider shall issue to each registered student a certificate of attendance that shall indicate the student's name, social security number or appraiser license/certification number, the date(s) and location of the course, the signature of an authorized representative of the sub-provider and a statement that the student did or did not attend a minimum of 90% of the course. A certificate of attendance may be in the form of a course attendance diploma, a certification letter, an official transcript or a "Uniform Request for Continuing Education Credit";
  - 6) Within 21 days after completion of each CE course presentation, the sub-provider shall certify to OBRE a roster of all duly registered students. The roster shall be on forms provided by OBRE and shall include:
    - A) the CE course license number;
    - B) the license number of the parent provider;
    - C) the date(s) and location of the CE presentation;
    - D) the name of the instructor(s);
    - E) a listing of students by full name, appraiser license number, social security number and an indication that the student did or did not attend a minimum of 90% of the course (the names shall be listed in alphabetical order);
    - F) the authorized signature of a representative of the sub-organization; and
    - G) the roster form must be stamped, using the personalized stamp provided to the sub-organization by OBRE.

## Section 1455.210 Pre-Licensure Course Curricula

- a) All courses approved for licensure as pre-licensure appraisal courses shall be categorized into one of the eight curricula listed below.
- 1) Courses assigned to the IL-I curricula, USPAP Courses, must contain a minimum of 15 hours of instruction including a final examination of a least 25 questions. To be approved for licensure, the applicant must submit a course syllabus that indicates a time frame for topic presentation. In addition, all course materials, including text books and final examination, must be submitted with the application. The examination may be a 25 question examination or a pool of examination questions from



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which a final examination may be developed for each presentation. The materials will not be returned. To be approved for licensure, the course must adequately cover 100% of the following topics:

- A) Ethics Provision - USPAP;
- B) Competency Provision - USPAP;
- C) Departure Provision - USPAP;
- D) All sections of Standards 1 through 6 of the USPAP;
- E) Advisory Opinions/Statements/Comments - USPAP; and
- F) Fair Housing/Fair Lending.

2) Courses assigned to the IL-II curricula are those that cover Basic Principles of Appraisal, including overview of the appraisal process covering the principles of market and valuation analysis necessary for appraising real property, an introduction to appraisal theory, concepts, techniques, and the level of competence required to perform professional appraisal analyses. These courses must contain a minimum of 30 hours of instruction including a final examination of at least 50 questions. Two courses of 15 hours each may be approved in tandem; i.e., to receive credit for either, the student would have to successfully complete both. To be approved for licensure, the applicant must submit a course syllabus that indicates a time frame for topic presentation. In addition, all course materials must be submitted, including the text books and final examination, with the application. The materials will not be returned. The examination may be a 50 question examination or a pool of examination questions from which a final examination may be developed for each presentation. The following specific topics must be included in the course curriculum:

- A) Influences on Real Estate
- B) Real Estate/Real Property/Personal Property
- C) Real Estate Ownership
- D) Legal Descriptions
- E) Types of Value
- F) Economic Principles
- G) Neighborhood Data and Analysis
- H) Site Data and Analysis
- I) Improvement Data and Analysis
- J) Basic Construction and Design
- K) Highest and Best Use Analysis
- L) Reconciliation and Final Value Estimate

3) Courses assigned to the IL-III curricula, Residential Appraisal Procedures, are those designed to provide an understanding and working knowledge of the procedures and techniques required to estimate the market value of residential properties. Emphasis should be placed on the extraction of data and the correct application of the three approaches to real estate valuation. These courses must contain a minimum of 30 hours of instruction

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including a final examination of at least 50 questions. Two courses of 15 hours each may be approved in tandem; i.e., to receive credit for either, the student would have to successfully complete both. To be approved for licensure, the applicant must submit a course syllabus that indicates the time frame for topic presentation. In addition, all course materials must be submitted, including the text books and final examination, with the application. The materials will not be returned. The examination may be a 50 question examination or a pool of examination questions from which a final examination may be developed for each presentation. The following specific topics must be included in the course curriculum:

- A) Residential Site Valuation - Sales Comparison
- B) Cost Approach - Cost Estimates
- C) Cost Approach - Entrepreneurial Profit/Incentive
- D) Cost Approach - Types of Depreciation
- E) Cost Approach - Depreciation - Age-Life Method
- F) Cost Approach - Depreciation - Market Extraction Method
- G) Cost Approach - Application
- H) Sales Comparison Approach - Units of Comparison
- I) Sales Comparison Approach - Elements of Comparison
- J) Sales Comparison Approach - Cash Equivalency
- K) Sales Comparison Approach - Making Adjustments
- L) Sales Comparison Approach - Application
- M) Income Capitalization Approach - Gross Rent Estimates
- N) Income Capitalization Approach - Gross Rent Multiplier
- O) Income Capitalization Approach - Application

4) Courses assigned to the IL-IV curricula, Non-residential Appraisal Procedures, are those that focus on the appraisal of nonresidential properties and provide a practical solution for estimating value by an in-depth study of appraisal theory and the development of advanced valuation skills. These courses must contain a minimum of 30 hours of instruction including a final examination of at least 50 questions. Two courses of 15 hours each may be approved in tandem; i.e., to receive credit for either, the student would have to successfully complete both. To be approved for licensure, the applicant must submit a course syllabus that indicates the time frame for topic presentation. In addition, all course materials, including the text books and final examination, must be submitted with the application. The materials will not be returned. The examination may be a 50 question examination or a pool of examination questions from which a final examination may be developed for each presentation. The following specific topics must be included in the course curriculum:

- A) Site Valuation - Sales Comparison
- B) Site Valuation - Allocation/Extraction
- C) Cost Approach - Cost Estimates

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- D) Cost Approach - Entrepreneurial Profit/Incentive  
 E) Cost Approach - Types of Depreciation  
 F) Cost Approach - Depreciation - Age-Life Method  
 G) Cost Approach - Depreciation - Market Extraction Method  
 H) Cost Approach - Application  
 I) Sales Comparison Approach - Units of Comparison  
 J) Sales Comparison Approach - Elements of Comparison  
 K) Sales Comparison Approach - Cash Equivalency  
 L) Sales Comparison Approach - Making Adjustments  
 M) Sales Comparison Approach - Application  
 N) Income Approach - Income Estimates  
 O) Income Approach - Expense Estimates  
 P) Income Approach - Capitalization Rates  
 Q) Income Approach - Direct Capitalization  
 R) Income Approach - Income Multipliers  
 S) Income Approach - Application
- 5) Courses assigned to the IL-V curricula, Capitalization Methods and Techniques, are to provide alternative methods of estimating present value based on income forecasts. These courses focus on more advanced capitalization methods and techniques. These courses must contain a minimum of 30 hours of instruction including a final examination of at least 50 questions. Two courses of 15 hours each may be approved in tandem; i.e., to receive credit for either, the student would have to successfully complete both. To be approved for licensure, the applicant must submit a course syllabus that indicates the time frame for topic presentation. In addition, all course materials, including the text books and final examination, must be submitted with the application. The materials will not be returned. The examination may be a 50 question examination or a pool of examination questions from which a final examination may be developed for each presentation. The following specific topics must be included in the course curriculum:
- A) Six Functions of \$1
  - B) Lease Analysis/Gross Income Estimates
  - C) Vacancy and Collection Loss
  - D) Operating Expense Estimates
  - E) Replacement Allowances
  - F) Operating Statement Ratios and Multipliers
  - G) Debt Service/Equity Dividend
  - H) Direct Capitalization
  - I) Overall Rate Development - Market Extraction
  - J) Overall Rate Development - Band of Investment
  - K) Overall Rate Development - Ratios/Multipliers
  - L) Equity Dividend Rate
  - M) Debt Coverage Ratio
  - N) Cash Flow Estimates
  - O) Reversion Estimates

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- P) Discount and Yield Rates  
 Q) Yield Capitalization Overview  
 R) Discounted Cash Flow Analysis
- 6) Courses assigned to the IL-VI curriculum are residential report writing courses designed to provide students with a basic understanding of effective writing as it pertains to residential real estate appraisals. Courses should include instruction in completing residential appraisal forms but should also cover narrative reporting relative to residential property, especially narrative reporting to further clarify a form type appraisal. Courses should be developed to teach the appraiser students methods and techniques that will enable them to write in a clear and concise manner and to accentuate the pertinent facts and eliminate non-pertinent information. The intent of these courses is to provide the student with the ability to prepare residential appraisal reports that will enable a reader who is unfamiliar with the appraisal process to understand the basics of the value approaches and be convinced that the conclusions drawn by the appraiser based on the data presented is reasonable and correct. These courses must contain a minimum of 15 hours of instruction. The final examination must include a minimum of 25 questions. To be approved for licensure, the applicant must submit a course syllabus that indicates the time frame for topic presentation and all course materials including the text books and the final examination. The materials will not be returned. The examination may be 25 questions or a pool of questions from which a final examination may be developed that includes a minimum of 25 questions.
- 7) Courses assigned to the IL-VII curriculum are courses designed to provide students with a basic understanding of effective writing as it pertains to non-residential real estate appraisals. Courses should include instruction in completing non-residential appraisal forms but should also cover narrative reporting relative to non-residential property. Courses should be developed to teach the appraiser students methods and techniques that will enable them to write in a clear and concise manner and to accentuate the pertinent facts and eliminate non-pertinent information. The intent of these courses is to provide the student with the ability to prepare non-residential appraisal reports that will enable a reader who is unfamiliar with the appraisal process to understand the basics of the value approaches and be convinced that the conclusions drawn by the appraiser based on the data presented is reasonable and correct. These courses must contain a minimum of 15 hours of instruction. The final examination must include a minimum of 25 questions. To be approved for licensure, the applicant must submit a course syllabus that indicates the time frame for topic presentation and all course materials including the text books and the final

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examination. The materials will not be returned. The examination may be 25 questions or a pool of questions from which a final examination may be developed that includes a minimum of 25 questions.

- 8) Courses assigned to the IL-E curriculum (Electives) are courses that contain topics not covered in the core course curricula; nonappraisal topics that relate to real estate appraisal such as statistics, real estate law, etc.; or a more copious presentation of a topic or topics that are included in the core courses. Elective courses shall be approved for a minimum of 15 hours or 30 hours of instruction, with the maximum approval of 30 hours. Elective courses must include a final examination with a minimum of 25 questions for 15 hours of instruction and 50 questions for 30 hours of instruction. To be approved for licensure, the applicant must submit a course syllabus that indicates the time frame for topic presentation. In addition, all course materials, including the text books and final examination, must be submitted with the application. The materials will not be returned. The examination may be 25 questions (15 hour course), 50 questions (30 hour course), or a pool of examination questions from which a final examination may be developed for each presentation. Credit for elective hours can be achieved by successful completion of courses approved in the IL-E curriculum or by successful completion of courses with excess hours approved and allocated for elective credit in accordance with subsection (a)(9) of this Section.

- 9) If 100% of the required topics for IL-II through IL-V courses are presented, the course shall be approved for the minimum required hours. Two 15 hour courses from a single provider may be approved to meet a 30 hour curriculum requirement, provided the courses together cover a minimum of 100% of the required curriculum topics. An application for one 15 hour course in a curriculum requiring 30 hours will be denied. For courses in the IL-I curriculum, 100% of the listed topics must be covered; courses in the IL-VI curriculum and IL-VII curriculum must cover topics as described in accordance with subsections (a)(6) and (7) of this Section. IL-E courses will be approved based upon the Board's review of the course as to the value of topics to be presented and their relationship to the appraisal process.

A) Classroom hours in excess of the curriculum requirement may be approved for elective credit. Such approval is limited to 9 excess hours for courses in a 30 hour curriculum requirement and 5 excess hours for courses in a 15 hour curriculum requirement;

B) Excess hours may be approved, within the above limits based upon the Board's evaluation of the appraisal education value of the excess hours.

- b) Successful completion of a pre-licensure course means that a student

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attended a minimum of 90% of all instruction and correctly answered 70% of all final examination questions.

- c) Pre-licensure courses shall be licensed for credit hours required by the curriculum; however, courses requiring a minimum of 30 hours may be approved as two 15 hour courses.

**Section 1455.220 Continuing Education Course Curricula**

- a) All CE courses licensed by OBRE are in 4 categories:

- 1) IL-CE-I are courses with topic material that relates to appraisal methods, techniques, theory, practice, and any other material relating to the practice of real estate appraisal. Courses in this curriculum may be approved for 3 to 28 hours.

- 2) IL-CE-II are courses that contain real estate topics other than real estate appraisal. Courses in this curriculum may be approved for 3 to 28 hours.

- 3) IL-CE-III are courses that contain topic material relative to the USPAP Provisions and Standards. Courses in this curriculum may be approved for 3 to 28 hours.

- 4) IL-CE-IV are courses that contain material relative to Fair Housing and Fair Lending. These courses will contain a minimum of 3 hours.

- b) CE courses, with or without a final examination, shall be approved by the Director, upon the recommendation of the Board. If the Director decides to approve or deny a course against the recommendation of the Board, then his/her reasons shall be submitted in writing to the Board with a copy to the Commissioner. The Board may move to petition the Commissioner to reverse the decision of the Director. The Commissioner's decision to approve or deny the course shall be final.

- c) Courses licensed by OBRE for pre-licensure appraiser education are approved for CE credit. The renewal applicant will be awarded credit for attendance at these courses provided the license for the course was valid and in good standing at the time of attendance, and provided the course is not repetitious, i.e., a course taken twice during the same pre-renewal period. A maximum of 28 CE hours may be credited for pre-licensure courses.

- d) The application for each course approval shall include a description of the course, a course (or instructor's) outline that shall list the time frame for topic presentation, the number of classroom instruction hours excluding examination, the time allotted for examination (if any), the specific course name as it will appear on transcripts or course certifications, a sample of the certificate, the transcript or other documentation that will be used to document the student's attendance, and any other information that may be required by OBRE.

- 1) An applicant may be required to submit texts and all other course materials for evaluation by the Appraisal Board.

- 2) The application for CE courses being offered by a sub-provider shall also include a certification in accordance with Section



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- 1455.200(c) of this Part.
- 3) The Board/Director shall approve courses that would contribute to the integrity, extension and enhancement of professional skills and knowledge in the practice of Real Estate Appraisal.
  - 4) The Board/Director shall not approve:
    - A) motivation courses or seminars;
    - B) courses or seminars that focus on the recruitment of employees or clients;
    - C) courses or seminars with instructional material relative to associations;
    - D) courses or seminars with instructional material relative to passing the State's appraiser examination;
    - E) courses or seminars having less than three classroom hours of instruction exclusive of examination (if any); and
    - F) a course for more than 28 hours CE credit.
  - 5) Subsequent to approval of any CE course, revisions in course content and/or course material shall be submitted for re-evaluation and re-approval. Failure to report course changes may result in revocation of the CE course license. The fee for re-approval shall be in accordance with Section 1455.130 of this Part.
  - 6) Approval (license) for CE courses shall expire on September 30 of odd numbered years. The provider or sub-provider may renew the approval (license) by completing a renewal application and paying the renewal fee in accordance with Section 1455.130 of this Part.
- e) Audits and Inspections. OBRE may conduct on-site inspections of the course provider's (or sub-provider's) place of business and may audit any session of any course approved for pre-license or CE credit.
- 1) At the request of OBRE, a course provider shall provide a list of all courses that the provider is planning to offer within a 6-month period subsequent to the request. The list shall include the name and license number of each course, as well as the date, time and location of each presentation.
  - 2) In the event of a course audit, the provider shall provide OBRE, at no cost, all course materials used in the presentation of the course being audited.
  - 3) An OBRE or designated OBRE employee may inspect the business office of any course provider (or sub-provider) during normal business hours.
- f) CE Course Withdrawal of Approval, Termination, Revocation
- 1) OBRE, upon recommendation of the Real Estate Appraisal Board, shall terminate, revoke, suspend or place on probation the approval of the real estate appraiser education provider when the quality of the program fails to continue to meet the established criteria of an approved provider as set out in Sections 1455.200, 1455.210 and 1455.220 of this Part, or upon determination that the decision to approve the program was based upon false or deceptive information.

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- 2) The provider's license will terminate immediately upon the failure to renew. Course licenses will terminate immediately upon the expiration date or upon the termination of the provider's license. The provider may thereafter reapply for approval as an appraiser education provider and for course approval.
- Section 1455.230 Appraisal Course Providers/Courses, Enforcement Procedures**
- a) OBRE shall investigate, or contract for investigation, all written complaints relative to violations by course providers or sub-providers registered with OBRE under the Act, or a violation of any of the provisions of Section 90(b) of the Act.
  - b) The Director shall have discretionary authority to close complaint cases:
    - 1) when OBRE has no regulatory authority over the course provider (or sub-provider) for which the allegations are charged;
    - 2) when the written complaint contains no evidence of a violation or reasonable cause to further investigate;
    - 3) when the written complaint contains no means to obtain further needed information or documentation from the complainant or when the complainant will not cooperate by testifying or by providing further information or documentation;
    - 4) when, in the opinion of the Director, the evidence from a preliminary investigation would not result in successful prosecution;
    - 5) when, in the opinion of the Director, the alleged violation was apparently inadvertent and had caused no significant harm to a student or the public; and
    - 6) when the investigation indicates that no violation has occurred, or that a violation might have occurred but the evidence, in the opinion of the Director, is less than clear and convincing.
  - c) Cases closed by the Director shall be referred to as Executive Closure or Dismissal and a summary of the allegations and reasons for closure will be available to the individual members of the Board for a period of six months, during which time a member may question the Director's decision and request the case be reopened.
    - 1) In the event a Board member requests a case be reopened, the Director shall reopen the case for further investigation or submit in writing, within 21 days after the request, the reasons why he will not honor the request.
    - 2) If the Director does not reopen a case that has been closed by Executive Dismissal, then the Board member may petition the Assistant Commissioner of Real Estate Professions, who shall consider both sides of the issue and decide if the case should be reopened. The decision of the Assistant Commissioner is final.
    - d) Upon the completion of an investigation or a preliminary investigation, the Director may, in accordance with Section 90 of the

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Act, hold an informal disciplinary conference with the course provider's representative(s) that shall be attended by at least one member of the Board and the Director or his/her designee. An assistant of the Director, or his/her designee, may attend the conference to assist in the proceedings.

- 1) The purpose of the conference shall be to attain further facts in the matter, to allow the provider to speak on his/her own behalf relative to the allegations presented at the meeting, and to seek a recommendation from the Conference Panel as to the disposition of the case.
- 2) At the conclusion of each informal conference, the Conference Panel may recommend that a settlement offer not be extended, in which case the file will change status from open active to pending formal hearing, and the investigation shall continue. Upon completion of the investigation, the file shall be submitted to prosecution for hearing in accordance with Section 100 of the Act and Subpart D of this Part.
- 3) The conference panel may recommend to the Director a disposition of the case by settlement offer. Such a recommendation shall include the terms and/or conditions for settlement. The recommendation shall be in one of the following forms:
  - A) that no further action be taken by OBRE on the allegations;
  - B) that an Administrative Warning Letter (AWL) be issued with or without conditions;
  - C) a Consent Order to Administrative Supervision (CAS-a non-publishable discipline) with or without conditions that may include, but shall not be limited to, reimbursement of costs associated with the handling of the complaint;
  - D) a Consent Order (CO) that shall include a publishable discipline of reprimand, probation, suspension, revocation, reclassification of licensure, other terms and conditions, and/or a fine of up to \$10,000 for each violation;
  - E) the Director shall prepare the documents for disposition of a case by Informal Disciplinary Conference (AWL, CO, CAS or Letter Dismissing the case) and transmit the documents to the course provider or sub-provider with any necessary instructions for his/her completion;
  - F) The complainant shall be notified by the Director of the disposition of the case;
  - G) The terms and conditions of any dismissal, with or without conditions, and the terms of a Consent to Administrative Supervision, shall be confidential except that the complainant, if a known individual, will be notified of the Administrative Supervision and the period of supervision.
    - i) The terms and conditions of a dismissal or a CAS may be released by legal mandate such as a court order or subpoena but is exempt from the Freedom of Information Act.

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- ii) In cases where the complaint is dismissed, with or without conditions, or where a license is placed on Administrative Supervision, OBRE-REAA will report the license in good standing, active or non-renewed, and the license may be reported by the course provider as a license in good standing that has not been disciplined;
- H) The terms and conditions of a CO, upon request and payment of any applicable duplication fees, shall be released by the Director. The terms and conditions of a CO may be published in the REAA newsletter publication along with course provider's name and license number, and, when applicable, the course name and license number may be published in other forums. A CO is available to the general public;
- I) This Section shall not limit the authority of OBRE to negotiate settlement agreements with course providers without an informal conference proceeding, or to revise the conditions of an AWL, CAS or CO, as recommended by the Conference Panel, in accordance with Section 90 of the Act.

## SUBPART C: APPRAISER ENFORCEMENT

## Section 1455.300 Appraiser Enforcement Procedures

- a) OBRE shall investigate, or contract for investigation, all written complaints relative to the appraisal practice of persons registered as appraisers under the Act.
- b) The Director shall have discretionary authority to close complaint cases when:
  - 1) OBRE has no regulatory authority over the persons for which the allegations are charged;
  - 2) the written complaint contains no evidence of a violation or reasonable cause to further investigate;
  - 3) the written complaint contains no means to obtain further needed information or documentation from the complainant, or when the complainant will not cooperate with testimony or by providing further information or documentation;
  - 4) in the opinion of the Director, the evidence from a preliminary investigation would not result in successful prosecution;
  - 5) in the opinion of the Director, the alleged violation was apparently inadvertent and caused no significant harm to the public;
  - 6) the only basis of a complaint is that the final value estimate was "too high" or "too low"; and
  - 7) the investigation indicates that no violation has occurred, or that a violation might have occurred but the evidence, in the opinion of the Director, is less than clear and convincing.

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c) Cases closed by the Director shall be referred to as Executive Closure or Dismissal and a summary of the allegations and reasons for closure will be available to the individual members of the Board, for a period of six months, during which time a member may question the Director's decision and request the case be reopened.

1) In the event a Board member requests a case be reopened, the Director shall reopen the case for further investigation, or submit in writing, within 21 days after the request, the reasons why he will not honor the request.

2) If the Director does not reopen a case that has been closed by Executive Dismissal, then the Board member may petition the Assistant Commissioner of Real Estate Professions, who shall consider both sides of the issue and decide if the case should be reopened. The decision of the Assistant Commissioner is final.

## Section 1455.310 Informal Conferences

a) Upon the completion of an investigation or a preliminary investigation, the Director may, in accordance with Section 90 of the Act, hold an informal disciplinary conference with respondent, which shall be attended by at least one member of the Board and the Director or his/her designee. The conference is not an open meeting, but an assistant of the Director, or his/her designee, may attend the conference to assist in the proceeding.

b) The purpose of the conference shall be to attain further facts in the matter, to allow respondents to speak on their own behalf relative to the allegations presented at the meeting, and to seek a recommendation from the Conference Panel as to the disposition of the case.

c) At the conclusion of each informal conference, the Conference Panel may recommend that a settlement offer not be extended, in which case the file will change status from open active to pending formal hearing and the investigation shall continue. Upon completion of the investigation, the file shall be submitted to prosecution for hearing in accordance with Section 100 of the Act and Subpart D of this Part, or the conference panel may recommend to the Director a disposition of the case by settlement offer.

## Section 1455.320 Settlements

A recommendation of settlement offer shall include the terms and/or conditions for settlement. The recommendation shall be in one of the following forms:

- a) dismissal of the allegations with or without conditions;
- b) a dismissal by Administrative Warning Letter (AWL) with or without conditions;
- c) a Consent Order (CO) to Administrative Supervision (CAS-a non-publishable discipline) with or without conditions that may include, but shall not be limited to, reimbursement of costs associated with the handling of the complaint;

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d) a Consent Order that shall include a publishable discipline of reprimand, probation, suspension, revocation, reclassification of licensure, other terms and conditions, and/or a fine of up to \$10,000 for each violation;

e) the Director shall prepare the documents for disposition of a case by Informal Disciplinary Conference (AWL, CO, CAS or letter dismissing the case) and transmit the documents to the respondent with any necessary instructions for his/her completion;

f) the complainant shall be notified by the Director of the disposition of the case;

g) the terms and conditions of any dismissal, with or without conditions, and the terms of a Consent to Administrative Supervision, shall be confidential except that the complainant, if known, will be notified of the Administrative Supervision and the period of supervision.

1) The terms and conditions of a dismissal or a CAS may be released by legal mandate such as a court order or subpoena but is exempt from the Freedom of Information Act.

2) A licensee whose case has been dismissed, with or without conditions, or a license that is or has been placed on Administrative Supervision will be reported by OBRE-REAA as a licensee in good standing, active or non-renewed, and may be reported by the respondent as a licensee in good standing that has not been disciplined

h) The terms and conditions of a CO, upon request and payment of any applicable duplication fees, shall be released by the Director. The terms and conditions of a CO may be published in the REAA newsletter publication along with respondent's name and license number, and may be published in other forums. A CO is available to the general public.

i) This Section shall not limit the authority of OBRE to negotiate settlement agreements with appraisers without an informal conference proceeding, or to revise the conditions of an AWL, CAS or CO, as recommended by the Conference Panel, in accordance with Section 90 of the Act.

## SUBPART D: HEARINGS

## Section 1455.400 Applicability

This Subpart shall apply to all hearings conducted under the jurisdiction of the Office of Banks and Real Estate, Division of Real Estate Appraisal Administration (hereinafter, the Agency) and the Commissioner of the Agency.

## Section 1455.410 Institution of a Contested Case by the Agency

a) A contested case is instituted by the Agency when a Complaint and Notice are mailed to the respondent's last known address, postage prepaid, by certified mail, by other signature restricted delivery



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- service, or by personal delivery.
- b) A Complaint shall be in writing, signed by the Chief of Real Estate Appraisal Prosecutions and shall include a clear statement of the acts or omissions alleged to violate a statute or rule, and citation of the statute or rule.
  - c) A Notice shall be in writing, shall contain the date, time, place and nature of the hearing to be held, shall refer to the Agency's rules of practice (this Subpart D and Appendices A and B), and shall comply with the Notice requirements of Section 1455.470 of this Part.

**Section 1455.420 Institution of a Contested Case by Petitioner**

- a) A contested case is instituted by a petitioner when a Petition for Hearing is served on the Agency in Springfield, Attention: Director of Real Estate Appraisal, postage prepaid, or delivered personally and received by the Agency in Chicago.
- b) In a case where a petitioner is seeking restoration of a certificate of registration that was revoked or suspended, the Petition for Hearing shall be in writing, signed by the petitioner, and shall set forth:
  - 1) The number of the certificate that was suspended or revoked;
  - 2) The docket number of the case that resulted in discipline;
  - 3) The date on which the suspension or revocation was ordered;
  - 4) Whether the order that suspended or revoked the license was appealed, and if so, whether a stay of the imposition of discipline was granted by any reviewing court;
  - 5) Proof of compliance with any conditions precedent to the filing of a petition, including, but not limited to, the payment of any fine, restitution, or course completion;
  - 6) All dates and types of employment held since the discipline was imposed, including the name of the employer, the employer's address and telephone number, and the name of any supervisor;
  - 7) All continuing or remedial education completed since the discipline was ordered;
  - 8) If the petitioner has sought medical treatment, psychotherapy or counseling since the discipline was ordered, and if rehabilitation is relied upon as a basis for petitioning that the license be restored, the name and address of the treating professional and whether petitioner consents to disclosure by the professional of matters that are relevant to whether petitioner is fit to resume practice;
  - 9) Any arrests or convictions since the discipline was ordered;
  - 10) Any disciplinary actions commenced or taken against the petitioner by any other licensing or regulatory agency in this State, or any other jurisdiction;
  - 11) A certification by the petitioner that he/she is in compliance with all applicable Court Orders and laws, including, but not limited to, those regarding student loans, continuing education

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- requirements, child support and Illinois tax liabilities; and
- 12) Date and disposition of any other petitions for restoration filed since the discipline was ordered.
  - c) The Agency may file a Notice of Intent to Deny Licensure, Notice of Intent to Refuse to Renew, or Notice of Intent to Suspend in matters alleging the registrant has been convicted of a crime, failed to file a tax return or pay Illinois taxes, child support, or Illinois guaranteed student loans, or has failed to comply with the continuing education renewal requirements and/or experience renewal requirements. The petitioner may respond to such Notices and seek to contest the decision by the Agency by the filing of a Petition for Hearing. The Petition for Hearing must be in writing, signed by the petitioner, and shall state with specificity the particular reasons why the petitioner believes that the reasons listed on the Notice are incorrect. When appropriate, the petitioner shall attach supporting documentation. The Petition for Hearing must be served upon the Agency no later than 30 days after the date of service of the Agency's Notice. Upon receipt by the Director of a properly completed Petition for Hearing, a case will be docketed and notice will be sent to the petitioner setting forth the date, time, and place of the Preliminary Hearing. d) The petitioner, or the petitioner's counsel, must appear for the Preliminary Hearing and any subsequent Status Hearings, unless a continuance has been granted by the Administrative Law Judge for good cause upon a written Motion for Continuance.

**Section 1455.430 Parties to Hearings**

The parties to an administrative hearing before the Agency are the Office of Banks and Real Estate and the Respondent or Petitioner.

**Section 1455.440 Joinder**

In the interest of a convenient, expeditious, and complete determination of matters, the Administrative Law Judge may consolidate or sever hearing proceedings involving any number of parties, and may order additional parties to be brought in.

**Section 1455.450 Form of Papers**

- a) All papers filed in any proceedings, except exhibits, shall be typewritten or printed. Long quotations shall be single spaced and indented.
- b) All papers, except exhibits, shall be cut or folded so as not to exceed a width of 8 1/2 inches and a length of 11 inches and shall have inside margins not less than one inch wide. Whenever practical, all exhibits of a documentary character shall conform to these requirements.
- c) All pleadings, written motions, or notices filed in the administrative

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proceedings shall be dated and signed in ink by the party filing the paper or his or her attorney or representative.

- d) Pleadings, written motions, and notices shall contain the address of the party filing the paper or, if represented by an attorney, the name, business address and telephone number, including area code, of such attorney.

- e) The first page of all pleadings, written motions or notices shall conform to the Agency's pleading format. (See Appendix A or B, whichever is applicable.)

## Section 1455.460 Service

- a) Service of any document may be by certified mail, personal delivery, or other signature restricted delivery service. Proof of service will be attached to the original of any document. In the absence of evidence to the contrary, the date shown on the proof of service shall be deemed the date of service.

- b) Service on the Commissioner, the Board, or the Agency is made by service on the Director at the Springfield headquarters. The date of service upon the Agency is either the date the document is personally delivered or deposited with the U.S. Postal Service, postage pre-paid.

- c) Service on a petitioner, registrant or respondent shall be by certified mail, personal delivery or other signature restricted delivery service to the last known address of record with the Agency, or to the last known address of the Illinois licensed attorney having filed an appearance on behalf of the respondent or petitioner, or by personal service.

- d) Service of any documents as provided in subsection (b) above will include at least two copies of the documents served.

- e) In a contested case instituted by the petitioner, the original and all copies of the initial petition will be served on the Director in Springfield. Thereafter, the petitioner will serve the original document on the Director in Springfield with a copy to the Chief of Real Estate Appraisal Prosecutions in Chicago. In all other cases, the original document will be served on the Director in Springfield with a copy to the Chief of Real Estate Appraisal Prosecutions in Chicago.

## Section 1455.470 Notice

- a) Notice shall include:

- 1) A statement of the time, place and nature of the hearing;
- 2) A statement of the legal authority and the jurisdiction under which the hearing is held;
- 3) Except where a more detailed statement is otherwise provided for by law, a short and plain statement of the matters asserted;
- 4) A statement that failure to file an answer within 20 days after service of the notice will result in default being taken against

## OFFICE OF BANKS AND REAL ESTATE

## NOTICE OF ADOPTED AMENDMENTS

the applicant or licensee and that the license or certificate may be suspended, revoked, or placed on probationary status, or other disciplinary action may be taken, including limiting the scope, nature or extent of practice, as the Commissioner may deem proper;

- 5) A statement that the Office of Banks and Real Estate shall afford the person an opportunity to be heard in person or by counsel.

- b) Except as otherwise provided by statute, the respondent will be given at least 30 days notice prior to the first date set for the Preliminary Hearing or hearings, as the case may be.

- c) Any change of address by the respondent or a petitioner must be in writing signed by the respondent or petitioner and served upon the Agency in Chicago.

- d) Any contention that improper notice was given will be deemed waived unless it is raised by the respondent or petitioner upon the first appearance of the respondent or petitioner.

- e) Proper notice is given by depositing a Notice with the U.S. Postal Service, either by certified mail or other signature restricted delivery service, to the last known address of the respondent or petitioner, or the Illinois licensed attorney having filed an appearance on behalf of the respondent or petitioner, or by personal service.

## Section 1455.480 Representation

- a) A party may be represented by an attorney who is licensed in Illinois. Attorneys who appear in a representative capacity must file a written notice of appearance setting forth:

- 1) The name, address and telephone number of the attorney; and
- 2) The name and address of the party represented.

- b) Attorneys licensed in other jurisdictions may appear on motion. Special appearances are not recognized. The initial appearance regardless of form is deemed a general appearance.

- c) An attorney may withdraw from employment as a representative only upon written notice to the Agency that states the attorney's specific reasons for withdrawing. Such written notice of withdrawal must be served upon the party who was represented in accordance with Section 1455.470. An affidavit of service must accompany the notice of withdrawal.

- d) Any corporation, partnership, limited liability company, or other legal entity must be represented by an Illinois licensed attorney. Attorneys appearing before the Agency shall conform their conduct to the Illinois Rules of Professional Conduct, effective August 1, 1990, and as amended thereafter. Any failure to behave in a manner that permits the efficient functioning of the Agency will authorize the Board or Administrative Law Judge to take the following actions:

- 1) limitation of evidence;
- 2) substitution of written argument in place of oral argument;

## OFFICE OF BANKS AND REAL ESTATE

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- 3) exclusion of an attorney from the proceeding.
- g) If any of the actions set forth in subsection (f) above are taken by the Board or Administrative Law Judge, it shall be done as a matter of record, and the Board or Administrative Law Judge shall state for the record the specific reasons for the action.

**Section 1455.490 Failure to Appear**

Failure to appear at the time and place set for hearing shall be deemed a waiver of the right to present evidence. After presentation by the Agency of an offer of proof that the respondent was given proper notice, the Board may deem the allegations of the complaint to be true, and shall make its recommendation. When a petitioner fails to appear, the Petition for Hearing shall be dismissed.

**Section 1455.500 Amendment, Withdrawal of Complaints and Petitions for Hearing**

- a) The Complaint may be amended at any time. An amended Complaint may be filed in the same manner as a Complaint, or it may be presented to the Board or Administrative Law Judge during the course of the hearing. A continuance shall be granted whenever the amendment materially alters the Complaint, and when the respondent demonstrates that he/she would otherwise be unable to continue to defend his or her case properly.
- b) A Complaint or Petition for Hearing may be withdrawn at any time prior to the hearing by the party who initiated it. After a hearing has begun, a Complaint may be withdrawn only upon written notice and with the permission of the Director.

**Section 1455.510 Requirement of an Answer**

- a) In all contested cases instituted by the Agency, the respondent shall file an Answer or otherwise plead within 20 days after the date on which the Complaint was filed. The Answer shall be in writing, signed by the respondent, and shall contain a specific response to each allegation in the Complaint. The response shall either admit or deny the allegation, or shall state that the respondent has insufficient information to admit or deny the allegation.
- b) Any Answer that states that the respondent has insufficient information to admit or deny the allegation shall be accompanied by an affidavit of the respondent attesting to the truth of this assertion.
- c) If an Answer or other responsive pleading has not been served on the Agency by the Preliminary Hearing, the Administrative Law Judge may find the respondent to be in default and order the matter to be sent to the Board on the pleadings.

**Section 1455.520 Discovery**

- a) Whether or not a request is made, during discovery a respondent who

## OFFICE OF BANKS AND REAL ESTATE

## NOTICE OF ADOPTED AMENDMENTS

has filed an Answer or a petitioner shall be entitled to:

- 1) The name and address of any witness who may be called to testify;
  - 2) Copies of any document that may be offered as evidence;
  - 3) A description of any other evidence that may be offered;
  - 4) Any exculpatory evidence in the Agency's possession. Exculpatory evidence is any evidence that tends to support the position of the respondent or petitioner or to call into question the credibility of an Agency witness; and
  - 5) A copy of all relevant investigative reports.
- b) Upon a written request served on the respondent or the petitioner, at any time after a Complaint is filed, or at any stage of the hearing, the respondent or petitioner will be required to produce within 7 days documents, books, records or other evidence that relates directly to respondent's practice of real estate appraisal or other subjects of the administrative hearing.
- c) Nothing in this Section shall prevent the parties in a contested case from agreeing to a mutual exchange of information that is more extensive than what is provided for in this Section. When all parties agree to the use of an evidence deposition, such agreement will be in writing and will operate as a waiver of any objection not made during the deposition, except for an objection that the testimony of the witness is not relevant to the case.
- d) Requests to Admit Facts and Genuineness of Documents shall be allowed in accordance with Supreme Court Rule 216.
- e) This Section will be construed to impose a continuing obligation upon the parties to exchange new information as it becomes available.

**Section 1455.530 Subpoenas**

- a) The Commissioner, Director or the Administrative Law Judge may issue subpoenas for the attendance of witnesses or production of books, records, documents or other evidence.
- b) Any respondent or petitioner seeking issuance of a subpoena will apply in writing to the Agency, Attention: Chief of Real Estate Appraisal Prosecutions, setting forth facts that purport to demonstrate that the drafted subpoena is required.
- c) Any party who, without lawful authority, in response to a subpoena or notice to produce, fails to appear or to answer any questions or produce any books, papers, records, or other documents relevant or material to such hearing shall, upon motion of the requesting party, be subject to sanctions, including, but not limited to:
  - 1) Dismissal of the case, or
  - 2) Striking of the Answer and sending the matter to the Board for deliberation and recommendation to the Commissioner based on the Notice and Complaint without a hearing, or
  - 3) Limitation or preclusion of evidence at hearing.
- d) Subpoenas shall be enforced in the same manner as subpoenas issued by the circuit courts of this State.



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## Section 1455.540 Prehearing Conference

- a) Upon written notice by the Administrative Law Judge in any proceeding, or upon written request by any party, the Administrative Law Judge may direct parties or their attorneys to appear at a specified time and place for a conference, prior to or during the course of hearing, for the purpose of formulating issues and considering:
  - 1) Simplification of issues;
  - 2) Limitation of issues;
  - 3) Negotiating admissions or stipulations;
  - 4) Limitation of witnesses or evidence;
  - 5) Exchange of exhibits; or
  - 6) Discussion of any other matter that may aid in efficient disposition of the case.
- b) Opportunity shall be afforded all parties to be represented by legal counsel and to dispose of the case by stipulation, agreed settlement or consent order, unless otherwise precluded by law. Any stipulation, agreed settlement, or consent order reached before a final determination by the Agency shall be submitted in writing to the Administrative Law Judge and shall become effective only if approved by the Agency.
- c) The Administrative Law Judge shall make a written record of all rulings, decisions or actions taken during the course of a pre-hearing conference.

## Section 1455.550 Hearings

- a) All hearings shall be public unless required by statute to be otherwise. The Administrative Law Judge may permit any person to offer oral testimony whether or not such person is a party to the proceedings.
- b) The following shall be the order of the proceedings of all hearings, subject to modification by the Administrative Law Judge for good cause:
  - 1) Presentation, argument and disposition of motions preliminary to a hearing on the merits of the matter raised in the Notice or Answer;
  - 2) Presentation of opening statements;
  - 3) Complainant's or petitioner's case in chief;
  - 4) Respondent's case in chief;
  - 5) Complainant's case in rebuttal;
  - 6) Complainant's closing statement, which may include legal argument;
  - 7) Respondent's closing statement, which may include legal argument; and
  - 8) Presentation and argument of all motions prior to final order.
- c) The Administrative Law Judge shall direct all parties to enter their appearances on the record.

## OFFICE OF BANKS AND REAL ESTATE

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- d) The Agency will arrange for a certified stenographic reporter (court reporter) to make a stenographic record of the hearing in all administrative hearings under this Part. Any person may make arrangements to obtain a copy of the stenographic record from the reporter. The Agency reserves the right to employ a certified stenographic reporter. A copy of any stenographic record made by an Agency employee may be purchased from the Agency at a cost of one dollar per page. There shall be no audio or video taping apart from any made by the certified stenographic reporter employed for those purposes by the Agency without the express consent of the Administrative Law Judge and all parties to the hearing.
- e) Corrections to the transcript of the record may be made by the Commissioner or the Administrative Law Judge.
- f) If a party, or any person at the instance of or in collusion with a party, violates any ruling of the Administrative Law Judge, the Administrative Law Judge, on motion, may enter such orders as are just, including, among others, the following:
  - 1) that further proceedings be stayed until the order or rule is complied with;
  - 2) that the offending party be barred from filing any other pleadings relating to any issue to which the refusal or failure relates;
  - 3) that the offending party be barred from maintaining any particular claim or defense relating to that issue;
  - 4) that a witness be barred from testifying concerning that issue;
  - 5) that, as to claims or defenses asserted in any pleading to which that issue is material, an order of default be entered against the offending party or that the offending party's pleading be dismissed without prejudice; or
  - 6) that any portion of the offending party's pleadings relating to that issue be stricken and, if thereby made appropriate, judgment be entered as to the issue.
- g) At the request of any party, the Administrative Law Judge may exclude all witnesses from the hearing room, except that each party or a representative of a party, in addition to legal counsel, shall be allowed to remain.

## Section 1455.560 Administrative Law Judges

In any contested case, the Commissioner shall employ an attorney, licensed to practice law in Illinois, to serve as an Administrative Law Judge. The Administrative Law Judge has the authority to conduct a hearing, take all necessary action to avoid delay, maintain order, and insure the development of a clear and complete record. The Administrative Law Judge shall have all powers necessary to conduct a hearing, including the power to:

- a) Administer oaths and affirmations;
- b) Regulate the course of hearings, set the time and place for continued hearings, fix time for filing of documents, provide for the taking of

## OFFICE OF BANKS AND REAL ESTATE

## NOTICE OF ADOPTED AMENDMENTS

- testimony by deposition if necessary, and generally conduct the proceeding according to generally recognized administrative law;
- c) Examine witnesses and direct witnesses to testify, limit the number of times any witness may testify, limit repetitious or cumulative testimony, and set reasonable limits on the amount of time each witness may testify;
  - d) Rule upon offers of proof and receive relevant evidence;
  - e) Direct parties to appear and confer for the settlement or simplification of issues, and otherwise conduct prehearing conferences;
  - f) Dispose of procedural requests or similar matters;
  - g) Continue the hearing from time to time when necessary;
  - h) Prepare for the Board written Findings of Fact, Conclusions of Law and Recommended Action for submission to the Commissioner.

**Section 1455.570 Disqualification of an Administrative Law Judge**

- a) Any interested party to a proceeding may, following notice and an opportunity to object, move to disqualify the assigned Administrative Law Judge on the basis of bias or conflict of interest. An adverse ruling or rulings rendered against the party or its representative in any previous matters shall not, in and of themselves, constitute sufficient grounds for disqualification under this Section. The Commissioner shall determine this issue as part of the record of the case. When an Administrative Law Judge is disqualified, or it becomes impractical for him/her to continue, another presiding officer may be assigned unless it is further shown that substantial bias will result from the assignment.
- b) No motion for disqualification shall be permitted after any substantive ruling has been made on the case by the Administrative Law Judge, unless it pertains to a conflict of interest not previously disclosed.

**Section 1455.580 Examination by the Board**

- a) Any member of the Board, or any Administrative Law Judge, may examine any witness.
- b) Either party may object to specific questions asked by the Board or Administrative Law Judge, but it shall not be objectionable that a question violates a technical rule of evidence. For purposes of this Subpart, hearsay is a substantive, rather than a technical, rule of evidence.

**Section 1455.590 Burden of Proof**

- a) The burden of proof rests with the Agency in all cases instituted by the Agency by the filing of a Complaint. A recommendation for discipline may be made by the Board or Administrative Law Judge only

## OFFICE OF BANKS AND REAL ESTATE

## NOTICE OF ADOPTED AMENDMENTS

- when the Agency establishes by clear and convincing evidence that the allegations of the Complaint are true.
- b) The burden of proof in all cases instituted by the filing of a Petition for Hearing rests with the petitioner. The petitioner must prove by a preponderance of the evidence that the license should be granted or restored, or that the intended adverse action should not be taken.

**Section 1455.600 Motions**

- a) Prior to the commencement of the hearing, any party may present written motions that are relevant and directed to matters of concern to the proceedings. All motions shall be filed with the Board and served upon all parties, and shall contain:
  - 1) A specific statement of the matter of concern,
  - 2) A statement of the specific relief or order sought,
  - 3) A statement of the facts and authority that support the relief or order sought.
- b) Motions shall be acted on by the Board or an Administrative Law Judge duly appointed for the proceeding. A written motion will be disposed of by written order and on notice to all parties.

**Section 1455.610 Continuances**

- a) A request for continuance of a hearing shall be subject to the discretion of the hearing officer.
  - 1) Such continuance may be granted, for good cause shown, provided the request is received by the hearing officer and each party or authorized representative of record not less than 5 days prior to the latest hearing date unless good cause for a continuance is shown prior to or during the hearing or between hearing dates due to the absence of material evidence, sudden unavailability of counsel, sudden illness of a party or an essential witness, or similar reasons. Such request shall be in writing, supported by an affidavit, and shall set forth alleged grounds for the request.
  - 2) Oral requests for continuances shall not be granted unless made during the hearing for good cause.
  - 3) Good cause includes, but is not limited to, service in the armed forces or serious illness relating to either party, that party's authorized representative of record, or essential witnesses, or sudden unavailability of counsel.
- b) A continuance, when granted, shall state a date certain, not more than 60 days from the prior scheduled hearing date, when the hearing shall reconvene.

**Section 1455.620 Evidence**

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- a) The rules of evidence and privilege as applied to civil cases in the circuit courts of this State shall be followed. However, evidence not admissible under such rules of evidence may be admitted (except where precluded by statute) if it is of a type commonly relied upon by reasonably prudent persons in the conduct of their affairs. Immaterial, irrelevant, or unduly repetitious material shall be excluded. A copy of the whole or any part of an admissible book, record, paper, or memorandum of the Agency that is made by photostatic or other method of accurate and permanent reproduction may be admitted in evidence at the hearing without further proof of the accuracy or authenticity of such copy. Objections to evidentiary offers may be made and shall be noted in the record.
- b) Official notice may be taken of matters of which circuit courts of this State may take judicial notice. In addition, official notice may be taken of generally recognized technical or scientific facts within the Agency's specialized knowledge. Parties shall be notified either before or during the hearing, or by reference in preliminary reports or otherwise, of the material noticed, including any staff memoranda or data, and they shall be afforded an opportunity to contest the material so noticed. The Agency's experience, technical competence and specialized knowledge may be utilized in the evaluation of evidence.

## OFFICE OF BANKS AND REAL ESTATE

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## Section 1455. APPENDIX A Caption for a Case Filed by the Agency

STATE OF ILLINOIS  
 OFFICE OF BANKS AND REAL ESTATE  
 REAL ESTATE APPRAISAL ADMINISTRATION DIVISION

OFFICE OF BANKS AND REAL ESTATE )  
 REAL ESTATE APPRAISAL ADMINISTRATION DIVISION )  
 of the State of Illinois, )

Complainant )

v. )

No. )

(NAME OF RESPONDENT)  
 (License Number), )

Respondent. )

COMPLAINT



## OFFICE OF BANKS AND REAL ESTATE

## NOTICE OF ADOPTED AMENDMENTS

## Section 1455.APPENDIX B Caption for a Case Filed by the Petitioner

STATE OF ILLINOIS  
OFFICE OF BANKS AND REAL ESTATE  
REAL ESTATE APPRAISAL ADMINISTRATION DIVISION

In RE the Petition for Restoration of )  
 ) No.  
 )  
(NAME OF PETITIONER )  
(License Number), )  
 )  
Petitioner )

## PETITION FOR HEARING

## BOARD OF TRUSTEES OF ILLINOIS PUBLIC UNIVERSITIES

## NOTICE OF ADOPTED REPEALER

1) Heading of the Part: Joint Rules of the Illinois Public Universities:  
Procurement and Bidding

2) Code Citation: 44 Ill. Adm. Code 525

3) Section Numbers:

Adopted Action:  
525.10 Repealed  
525.20 Repealed  
525.50 Repealed  
525.60 Repealed  
525.70 Repealed  
525.100 Repealed  
525.110 Repealed  
525.200 Repealed  
525.300 Repealed  
525.310 Repealed  
525.320 Repealed  
525.330 Repealed  
525.340 Repealed  
525.350 Repealed  
525.400 Repealed  
525.410 Repealed  
525.500 Repealed  
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525.610 Repealed  
525.620 Repealed  
525.630 Repealed  
525.640 Repealed  
525.650 Repealed  
525.660 Repealed  
525.670 Repealed  
525.700 Repealed  
525.710 Repealed

4) Statutory Authority: [30 ILCS 505]

5) Effective Date of Adopted Repealer: November 20, 1998

6) Does this Adopted Repealer contain an automatic repeal date? No

7) Does this Adopted Repealer contain incorporations by reference? No

8) A copy of the repealer is on file in the agency's principal office and is available for public inspection.

## BOARD OF TRUSTEES OF ILLINOIS PUBLIC UNIVERSITIES

## NOTICE OF ADOPTED REPEALER

9) Notice of Proposed Repealer Published in Illinois Register:

June 19, 1998 22 Ill Reg 10814

10) Has JCAR issued a Statement of Objections to this Repealer? No11) Differences between proposal and final version:

There were no differences.

12) Have all the changes agreed upon by the agency and JCAR been made as indicated in the agreement letter issued by JCAR?

No changes were needed.

13) Will this Repealer replace an Emergency Repealer currently in effect? Yes14) Are there any amendments pending on this Part? No15) Summary and Purpose of Repealer:

These rules have been replaced by a new set of rules found at 44 Ill. Adm. Code 526 that reflect the requirements of the new Illinois Procurement Code (PA 90-572).

16) Information and questions regarding this Adopted Repealer should be forwarded to:

Robert C. Baker  
Director of IPHEC Purchasing  
University of Illinois at Urbana-Champaign  
Purchasing Division  
506 S. Wright St., Rm. 207  
Urbana, IL 61801  
217/333-3582  
FAX: 217/244-7879  
E-MAIL: rbaker@uiuc.edu

## DEPARTMENT OF CENTRAL MANAGEMENT SERVICES

## NOTICE OF ADOPTED REPEALER

1) Heading of the Part: Standard Procurement2) Code Citation: 44 Ill. Adm. Code 13) Section Numbers:

1.100 Repealed

1.110 Repealed

1.120 Repealed

1.130 Repealed

1.200 Repealed

1.210 Repealed

1.220 Repealed

1.230 Repealed

1.240 Repealed

1.250 Repealed

1.300 Repealed

1.310 Repealed

1.320 Repealed

1.330 Repealed

1.340 Repealed

1.350 Repealed

1.400 Repealed

1.410 Repealed

1.420 Repealed

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1.800 Repealed

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1.820 Repealed

1.830 Repealed

1.840 Repealed

1.840 Repealed

## DEPARTMENT OF CENTRAL MANAGEMENT SERVICES

## NOTICE OF ADOPTED REPEALER

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## DEPARTMENT OF CENTRAL MANAGEMENT SERVICES

## NOTICE OF ADOPTED REPEALER

1.1720 Repealed  
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1.2240 Repealed  
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1.2460 Repealed  
1.2470 Repealed



## DEPARTMENT OF CENTRAL MANAGEMENT SERVICES

## NOTICE OF ADOPTED REPEALER

- 4) Statutory Authority: Public Act 90-572 repeals the Illinois Purchasing Act [30 ILCS 505], the State Printing Contracts Act [30 ILCS 515] and the State Paper Purchasing Act [30 ILCS 510], the main laws under which these rules were promulgated. Public Act 90-572 requires rulemaking to implement the new Illinois Procurement Code [5 ILCS 500].
- 5) Effective Date of Repealer: November 25, 1998
- 6) Does this rulemaking contain an automatic repeal date? No
- 7) Do these rules contain incorporations by reference? Not applicable
- 8) A copy of the adopted repealer is on file in the agency's principal office and is available for public inspection.
- 9) Date Notice of Proposal Published in Illinois Register: May 15, 1998, 22 Ill. Reg. 8067
- 10) Has JCAR issued a Statement of Objections to the rules? No
- 11) Differences between proposal and final version: None
- 12) Have all the changes agreed upon by the agency and JCAR been made as indicated in the agreement letter issued by JCAR? No changes were necessary
- 13) Will these rules replace an emergency rule currently in effect? Yes (This repealer will replace an emergency repealer that had been in effect since July 1, 1998).
- 14) Are there any amendments pending on this Part? No
- 15) Summary and Purpose of Rulemaking: Repeal of Standard Procurement Rules (44 Ill. Adm. Code 1)
- 16) Information and questions regarding this adopted repealer shall be directed to:

Stephen W. Seiple  
720 Stratton Office Building  
Springfield, IL 62706  
(217) 782-9669

## DEPARTMENT OF CENTRAL MANAGEMENT SERVICES

## NOTICE OF ADOPTED RULES

- 1) Heading of the Part: Standard Procurement
- 2) Code Citation: 44 Ill. Adm. Code 1
- 3) Section Numbers: Adopted Action:
- |        |     |
|--------|-----|
| 1.01   | New |
| 1.05   | New |
| 1.08   | New |
| 1.10   | New |
| 1.25   | New |
| 1.30   | New |
| 1.525  | New |
| 1.1005 | New |
| 1.1010 | New |
| 1.1030 | New |
| 1.1040 | New |
| 1.1050 | New |
| 1.1060 | New |
| 1.1070 | New |
| 1.1075 | New |
| 1.1080 | New |
| 1.1510 | New |
| 1.1525 | New |
| 1.1550 | New |
| 1.1560 | New |
| 1.1570 | New |
| 1.1580 | New |
| 1.1590 | New |
| 1.2005 | New |
| 1.2010 | New |
| 1.2012 | New |
| 1.2015 | New |
| 1.2020 | New |
| 1.2025 | New |
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| 1.2035 | New |
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| 1.2037 | New |
| 1.2038 | New |
| 1.2040 | New |
| 1.2043 | New |
| 1.2044 | New |
| 1.2045 | New |
| 1.2046 | New |
| 1.2047 | New |
| 1.2050 | New |
| 1.2055 | New |
| 1.2060 | New |

## DEPARTMENT OF CENTRAL MANAGEMENT SERVICES

## NOTICE OF ADOPTED RULES

1.2560 New  
 1.2570 New  
 1.2800 New  
 1.3005 New  
 1.4005 New  
 1.4505 New  
 1.4510 New  
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 1.7025 New  
 1.7030 New

- 4) Statutory Authority: 30 ILCS 500 and 30 ILCS 525
- 5) Effective Date of Rules: November 25, 1998
- 6) Does this rulemaking contain an automatic repeal date? No
- 7) Do these rules contain incorporations by reference? No
- 8) A copy of the adopted rule, including any material incorporated by reference, is on file in the agency's principal office and is available for public inspection.

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- 9) Date Notice of Proposal Published in Illinois Register: May 15, 1998, 22 Ill. Reg. 8154
- 10) Has JCAR issued a Statement of Objections to the rules? No
- 11) Differences between proposal and final version.  
 Section 1.10(d)(1). Inserted after "boards", "community colleges and their governing boards and school districts. This provision applies to contracts between governmental entities; it does not allow State agencies to utilize contracts established by other governmental entities.);"  
 Section 1.15. Added definition of "Bid".  
 Section 1.15. Added definition of "Consulting Services".  
 Section 1.15. Edited definition of "Contract".  
 Section 1.15. Edited definition of "Purchase of Care".  
 Section 1.15. Edited definition of "Service".  
 Section 1.525(b). Last sentence, changed "30 days" to "90 days".  
 Section 1.1040(b)(1)(B)(vi). Rewritten.  
 Section 1040(b)(2)(B). Edited and added new language.  
 Section 1.1050(b). Rewritten.  
 Added Section 1.1080 Illinois Mathematics and Science Academy.  
 Section 1.1580. Added "No direct solicitation shall be made prior to the date any required notice first appears in the Bulletin."  
 Section 1.2005(a)(1). Deleted "even if on time". Added "A bid which is delivered to the wrong location but which is subsequently delivered to the correct location by the date and time specified shall be considered, but the agency shall not be responsible for ensuring such subsequent delivery."  
 Section 1.2005(b)(2). Inserted after "offerors", the words "who submitted timely bids or proposals". Added "This extension does not provide an opportunity for others to submit bids or proposals."  
 Section 1.2010(e)(1). Deleted "\$10,000" and substituted "the small purchase amount".

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Section 1.2015(b). Inserted after "categories", the following: "(note that the following services, if they are professional and artistic, must be procured pursuant to Section 1.2035 of this Part)".

Section 1.2020(d). Deleted "\$10,000" and substituted "the small purchase amount".

Section 1.2020. Added subsection (g).

Section 1.2025(b). Added subsection (b)(8).

Section 1.2025(c). Added subsection (c)(2).

Section 1.2030(a). Added the phrase "and that is not a sole source procurement under Section 1.2025 of this Part."

Section 1.2030(b). Added the following: "Procurements may be made under this Section 1.2030 in the following circumstances:"

Section 1.2030(b)(1). Rewritten.

Section 1.2030(b)(1)(E) and (F). Deleted.

Section 1.2030(b)(1)(I), (J) and (K). Deleted. Relettered remaining subsections.

Section 1.2030(b). Added subsections (b)(3) and (b)(4).

Section 1.2035(o). New. Relettered (o) and (p) to (p) and (q) respectively.

Section 1.2035(r). New. Relettered (q) to (s).

Section 1.2036(c). Changed "Master" to "Term and Condition".

Section 1.2036(c)(2). After "processing", inserted "sole source, emergency or".

Section 1.2036(f). Edited.

Section 1.2045. Rewritten.

Section 1.2046(b)(1)(I). New.

Section 1.2050(d)(4). New.

Section 1.4505. Added last two sentences.

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Section 1.4545(e)(5). Rewritten.

Section 1.5013(c). Added last two sentences.

Section 1.5030. Rewritten.

Section 1.5035. Rewritten.

Section 1.5550(c)(1), changed "14" to "7 calendar".

Several minor editing changes have also been made.

12) Have all the changes agreed upon by the agency and JCAR been made as indicated in the agreement letter issued by JCAR? Yes

13) Will these rules replace an emergency rule currently in effect? Yes

14) Are there any amendments pending on this Part? No

15) Summary and Purpose of Rulemaking: The rules will replace the current procurement rules found at 44 Ill. Adm. Code 1 with a new set of rules to reflect the requirements of the new Illinois Procurement Code. The rules describe rulemaking and procurement authority; the various methods of source selection, including the use of invitation for bids and requests for proposals and a special procedure for processing professional service procurements; type and duration of contracts; preferences for small business and sheltered workshops for the disabled, and various other elements of the procurement process.

16) Information and questions regarding these adopted rules shall be directed to:

Stephen W. Seiple  
720 Stratton Office Building  
Springfield, IL 62706  
217/782-9669

The full text of the Adopted Rules begin on the next page.



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TITLE 44: GOVERNMENT CONTRACTS, PROCUREMENT AND PROPERTY MANAGEMENT  
 SUBTITLE A: PROCUREMENT AND CONTRACT PROVISIONS  
 CHAPTER I: DEPARTMENT OF CENTRAL MANAGEMENT SERVICES

## PART 1

## STANDARD PROCUREMENT

## SUBPART A: GENERAL

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1.01	Title
1.05	Policy
1.08	Purpose and Implementation of This Part
1.10	Application
1.15	Definition of Terms Used in This Part
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## SUBPART B: PROCUREMENT RULES

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1.1050	Procurement Authority of the SPO; Limitations
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## SUBPART D: PUBLICIZING PROCUREMENT ACTIONS

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## SUBPART E: SOURCE SELECTION AND CONTRACT FORMATION

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Section	
1.2005	General Provisions
1.2010	Competitive Sealed Bidding
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1.2025	Sole Economically Feasible Source Procurement
1.2030	Emergency Procurements
1.2035	Competitive Selection Procedures for Professional and Artistic Services
1.2036	Other Methods of Source Selection
1.2037	Tie Bids and Proposals
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## SUBPART F: SUPPLIERS, PREQUALIFICATION AND RESPONSIBILITY

Section	
1.2043	Suppliers
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## SUBPART G: BID, PROPOSAL AND PERFORMANCE SECURITY

Section	
1.2047	Security Requirements

## SUBPART H: SPECIFICATIONS AND SAMPLES

Section	
1.2050	Specifications and Samples

## SUBPART I: CONTRACT TYPE

Section	
1.2055	Types of Contracts

## SUBPART J: DURATION OF CONTRACTS

Section	
1.2060	Duration of Contracts - General

## SUBPART K: CONTRACT MATTERS

Section	
1.2560	Prevailing Wage
1.2570	Equal Employment Opportunity; Affirmative Action

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## SUBPART L: CONTRACT PRICING

Section  
1.2800 All Costs Included

## SUBPART M: CONSTRUCTION AND CONSTRUCTION RELATED PROFESSIONAL SERVICES

Section  
1.3005 Construction and Construction Related Professional Services

## SUBPART N: REAL PROPERTY LEASES AND CAPITAL IMPROVEMENT LEASES

Section  
1.4005 Real Property Leases and Capital Improvement Leases

## SUBPART O: PREFERENCES

Section  
1.4505 Procurement Preferences  
1.4510 Resident Bidder Preference  
1.4530 Correctional Industries  
1.4535 Sheltered Workshops for the Disabled  
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## SUBPART P: ETHICS

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1.5013 Conflicts of Interest  
1.5015 Negotiations for Future Employment  
1.5020 Exemptions  
1.5030 Revolving Door  
1.5035 Disclosure of Financial Interests and Potential Conflicts of Interest

## SUBPART Q: CONCESSIONS

Section  
1.5310 Concessions

## SUBPART R: COMPLAINTS, PROTESTS AND REMEDIES

Section  
1.5510 Complaints Against Vendors  
1.5520 Suspension  
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1.5540 Violation of Law or Rule  
1.5550 Protests

## SUBPART S: SUPPLY MANAGEMENT AND DISPOSITIONS

Section  
1.6010 Supply Management and Dispositions

## SUBPART T: GOVERNMENTAL JOINT PURCHASING

Section  
1.6500 General  
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## SUBPART U: MISCELLANEOUS PROVISIONS OF GENERAL APPLICABILITY

Section  
1.7000 Severability  
1.7010 Government Furnished Property  
1.7015 Inspections  
1.7020 Records and Audits  
1.7025 Written Determinations  
1.7030 No Waiver of Sovereign Immunity

AUTHORITY: The Illinois Procurement Code [30 ILCS 500] (see P.A. 90-572).

SOURCE: Adopted at 7 Ill. Reg. 100, effective December 17, 1982; amended at 7 Ill. Reg. 13481, effective October 4, 1983; amended at 7 Ill. Reg. 13844, effective October 12, 1983; codified at 8 Ill. Reg. 14941; Sections 1.2210, 1.2220, 1.2230, 1.2240 reclassified to Section 1.2210 at 9 Ill. Reg. 6118; amended at 10 Ill. Reg. 923, effective January 2, 1986; amended at 10 Ill. Reg. 18707, effective October 22, 1986; amended at 11 Ill. Reg. 7225, effective April 6, 1987; amended at 11 Ill. Reg. 7595, effective April 14, 1987; amended at 13 Ill. Reg. 17804, effective November 7, 1989; emergency amendment at 16 Ill. Reg. 13118, effective August 7, 1992, for a maximum of 150 days; amended at 17 Ill. Reg. 600, effective January 5, 1993; amended at 17 Ill. Reg. 14576, effective August 27, 1993; amended at 20 Ill. Reg. 9015, effective July 1, 1996; old Part repealed by emergency rulemaking at 22 Ill. Reg. 12632, effective July 1, 1998, for a maximum of 150 days and new Part adopted by emergency rulemaking at 22 Ill. Reg. 12726, effective July 1, 1998, for a maximum of 150 days; old ~~Nov 24 1998~~ **Nov 24 1998** and new Part adopted at 22 Ill. Reg. **20872**, effective **20872**.

SUBPART A: GENERAL

## DEPARTMENT OF CENTRAL MANAGEMENT SERVICES

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**Section 1.01 Title**

This Part may be cited as the Standard Procurement Rules.

**Section 1.05 Policy**

All State procurements shall be accomplished in the most economical, expeditious and commercially reasonable manner that is in accordance with statute, this Part and other applicable rules.

**Section 1.08 Purpose and Implementation of This Part**

- a) This Part establishes rules necessary and appropriate to implement the authorities granted by the Illinois Procurement Code (Code) [30 ILCS 500] relating to the procurement, management, and control of supplies, services, real estate leases and related capital improvement, concessions and, as applicable, construction, and necessary rulemaking under the authority of the Code.
- b) This Part applies to all procurements and procurement rulemaking under the jurisdiction of the Chief Procurement Officer (CPO) and any State Purchasing Officer (SPO) appointed by the CPO. For the purposes of this Part, any reference to CPO means the Director of the Department of Central Management Services unless the context indicates otherwise.
- c) This Part is intended to make policies, procedures and guidelines for procurement of necessary supplies and services by State agencies uniform and consistent among and within State agencies in order to facilitate participation in State procurements, encourage competition, and ensure that procurements are conducted in a fair and open manner. Implementation by and within State agencies shall be consistent with this Part. Operational interpretations are to be made in a flexible manner designed to secure the State's needs and protect the State's interests.

**Section 1.10 Application**

- a) The Code and this Part apply to those procurements for which the vendors were first solicited on or after July 1, 1998.
- b) Procurements for which vendors were first solicited on or before June 30, 1998, shall be conducted pursuant to legal requirements in effect at the time of the solicitation. The terms and conditions and the rights and obligations under contracts resulting from such procurements shall not be impaired.
- c) A solicitation occurs on or before June 30, 1998, as follows:
  - 1) When advertising was required in the Official State Newspaper, the first advertisement must run no later than June 30, 1998.
  - 2) When advertising was not required:
    - A) if the procurement was advertised, even though advertising was not required, the first advertisement must have run no

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later than June 30, 1998;

- B) if the procurement was by direct solicitation by mail, the solicitation must have been postmarked or placed in the control of a private carrier no later than June 30, 1998;
- C) if the procurement was by direct solicitation by fax, the fax must show a transmission date no later than June 30, 1998;
- D) if the procurement was solicited in-person or by telephone, the solicitation must have occurred no later than June 30, 1998, and the State officer or employee who made the solicitation must state in writing when the procurement was discussed and must name the party with whom the discussion took place.
- 3) In all circumstances, the solicitations must be for the procurement of particular needs. A general discussion to determine if there is any interest on the part of a State agency in the supplies or services of a vendor or vendors, or on the part of a vendor or vendors in providing the supplies or services, is not considered a solicitation.
- d) The Code and this Part do not apply to:
  - 1) contracts between the State and its political subdivisions or other governments, or between State governmental bodies except as specifically provided in the Code. (For purposes of this subsection (d)(1), "governmental bodies" includes the State universities and their governing boards, community colleges and their governing boards and school districts. This provision applies to contracts between governmental entities; it does not allow State agencies to utilize contracts established by other governmental entities.);
  - 2) grants;
  - 3) purchase of care;
  - 4) hiring of an individual as employee and not as an independent contractor, whether pursuant to an employment code or policy or by contract directly with that individual;
  - 5) collective bargaining contracts;
  - 6) purchase of real estate; or
  - 7) contracts necessary to prepare for anticipated litigation, enforcement actions, or investigations, provided that the chief legal counsel to the Governor shall give his or her prior approval when the procuring agency is one subject to the jurisdiction of the Governor, and provided that the chief legal counsel of any other procuring entity subject to this Code shall give his or her prior approval when the procuring entity is not one subject to the jurisdiction of the Governor. [30 ILCS 500/1-10] Anticipated litigation is that which a State agency may prosecute or defend before a court or administrative body and actions necessary to prepare for and conduct the effective legal prosecution or defense of litigation, including, but not limited



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to, contracting for expert witnesses.

### Section 1.15 Definition of Terms Used in This Part

As used throughout this Part, terms defined in the Illinois Procurement Code shall have the same meaning as in the Code and as further defined below, and each term listed in this Section shall have the meaning set forth below unless its use clearly requires a different meaning. Terms may be defined in particular Sections for use in that Section.

"Bid" - The response to an Invitation for Bids.

"Bidder" - Any person who submits a bid.

"Brand Name or Equal Specification" - A specification that uses one or more manufacturer's names or catalogue numbers to describe the standard of quality, performance, and other characteristics needed to meet State requirements, and that allows the submission of equivalent products.

"Brand Name Specification" - A specification limited to one or more items by manufacturers' names or catalogue numbers.

"Code" - The Illinois Procurement Code [30 ILCS 500].

"Concession" - The right or a lease to engage in a certain activity for profit on the lessor's premises (e.g., a refreshment or parking concession).

"Consulting Services" - Services provided by a business or person as an independent contractor to advise and assist an agency in solving specific management or programmatic problems involving the organization, planning, direction, control or operations of a State agency. The services may or may not rise to the level of professional and artistic as defined in the Code and this Part.

"Contract" - A contract may be in written or oral form. The term contract as used in the Code and this Part does not include: supplies or services the terms governing which are established by tariff of the Illinois Commerce Commission or the Federal Communications Commission, bonds, or contracts relating to bonds issued by or on behalf of a State Agency when the contractor or vendor is neither selected nor paid by the State Agency. The term "contract" includes, but is not limited to purchase, installment purchase, lease and rental contracts.

"Contractor" or "Vendor" - The terms contractor and vendor are used interchangeably for purposes of the Code and this Part.

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"Day" - Calendar day. In computing any period of time, the day of the event from which the designated period of time begins to run shall not be included, but the last day of the period shall be included unless it is a Saturday, Sunday, or a State holiday, in which event the period shall run to the end of the next business day.

"Items" - Anything that may be procured under this Code.

"Invitation for Bids" or "IFB" - The process by which a purchasing agency requests information from bidders, including all documents, whether attached or incorporated by reference, used for soliciting bids. [30 ILCS 500/1-15.45]

"Procurement Officer" - The Chief Procurement Officer (CPO) or appropriate State Purchasing Officer (SPO) who conducts the particular procurement, or a designee of either.

"Proposal" - The response to a Request for Proposals.

"Purchase of Care" - A contract with a person for the furnishing of medical, educational, psychiatric, vocational, rehabilitation, social, or human services directly to a recipient of a State aid program. [30 ILCS 500/1-15.68] Purchase of care includes services provided or arranged to be provided by the vendor in conjunction with the purchase of care. Such services may include administrative and management services, enrollment, health education, grievance procedures, case management, utilization review, quality assurance, peer review, or marketing. Recipient of a State aid program includes applicants for a State aid program.

"Qualified Products List" - An approved list of supplies described by model or catalog numbers that, prior to competitive solicitation, the State has determined will meet the applicable specification requirements.

"Request for Proposals" or "RFP" - The process by which a purchasing agency requests information from offerors, including all documents, whether attached or incorporated by reference, used for soliciting proposals. [30 ILCS 500/1-15.75]

"Requesting Agency" - The agency that requests that the CPO conduct a procurement for its use. All procurements reserved to the CPO that have not been delegated must be initiated by a purchase request.

"Responsive Bidder" - A person who has submitted a bid that conforms in all material respects to the invitation for bids. [30 ILCS 500/1-85]

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"Responsible Offeror" - A person who has submitted an offer that conforms in all material respects to the Request for Proposals.

"Service" - *The furnishing of labor, time, or effort by a contractor, not involving the delivery of a specific end product other than reports or supplies that are incidental to the required performance and the financing thereof.* [30 ILCS 500/1-15.90]

"Specification" - Any description of the physical, functional, or performance characteristics, or of the nature of a supply or service. A specification includes, as appropriate, requirements for inspecting, testing, or preparing a supply or service item for delivery. Unless the context requires otherwise, the terms "specification" and "purchase description" are used interchangeably throughout this Part.

"Specification for a Common or General Use Item" - A specification that has been developed and approved for repeated use in procurements.

"State agency" - Includes all boards, commissions, agencies, institutions, authorities, and bodies politic and corporate of the State, created by or in accordance with the constitution or statute, of the executive branch of State government and does include colleges, universities, and institutions under the jurisdiction of the governing boards of the University of Illinois, Southern Illinois University, Illinois State University, Eastern Illinois University, Northern Illinois University, Western Illinois University, Chicago State University, Governors State University, Northeastern Illinois University, and the Board of Higher Education. However, this term does not apply to public employee retirement systems or investment boards that are subject to fiduciary duties imposed by the Illinois Pension Code or to the University of Illinois Foundation. "State agency" does not include units of local government, school districts, community colleges under the Public Community College Act, and the Illinois Comprehensive Health Insurance Board. [30 ILCS 500/1-15.100]

"Supplies" - All personal property, including but not limited to equipment, materials, printing, and insurance, and the financing of those supplies. [30 ILCS 500/1-15.110]

"Unsolicited Offer" - Any offer other than one submitted in response to a solicitation.

## Section 1.25 Property Rights

Receipt of an Invitation for Bids or other procurement document, or submission of any response thereto, or other offer, confers no right to receive an award or contract, nor does it obligate the State in any manner.

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## Section 1.30 Constitutional Officers, and Legislative and Judicial Branches

Upon request by a constitutional officer or by a representative of the legislative or judicial branches, the CPO may, subject to staff availability and time constraints, conduct procurements on behalf of those constitutional officers or branches. These procurements will be conducted in accordance with the Code and this Part unless the requesting entity delegates its authority, in which case the requirements applicable to such entity may be followed.

## SUBPART B: PROCUREMENT RULES

## Section 1.525 Rules

- a) Procurement under the jurisdiction of the CPO or an appointed SPO shall be conducted in accordance with the Code and this Part except as provided in this Section.
- b) Agencies with rules regarding procurement on file with the Secretary of State as of the effective date of this Part shall, within 30 days after the effective date of this Part, submit those rules to the CPO for review and approval. If the CPO does not approve those rules, the agency shall begin rulemaking to repeal or modify them in accordance with the Standard Procurement Rules and the Code within 90 days after the CPO's decision.
- c) An agency that has procurement needs not adequately addressed by the Standard Procurement Rules may inform the CPO and provide a draft of proposed rules to address those procurement needs, including a statement explaining why particular program needs of the agency require a rule different from or in addition to the Standard Procurement Rules. In lieu of approving rules proposed by the agency, the CPO may elect to meet the agency's need by amending these Standard Procurement Rules.
- d) All procurement rules proposed by an agency governed by the Code must be approved by the CPO prior to submission for publication as a proposed rule and again prior to adoption after all comments have been addressed.
- e) An agency with procurement rules approved by the CPO shall review those rules in conjunction with the Illinois Procurement Code and shall report to the CPO if changes are needed in their rules. The CPO shall inform each agency with procurement rules approved by the CPO of changes proposed to these Standard Procurement Rules that will require changes to their rules. In each such case, the CPO or SPO shall commence appropriate rulemaking.
- f) All proposed rules will be submitted to the Procurement Policy Board (Board) before or during the public comment period established under the Administrative Procedure Act. Rulemaking, except for emergency rulemaking, shall be scheduled so as to allow the Board at least 30 days to provide comments.
- g) Emergency rules will be submitted to the Board for review and comment

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with as much notice as is reasonably possible. A copy of the adopted emergency rules shall be provided to the Board. The Board shall be given opportunity to comment on rules proposed to replace the emergency rules.

## SUBPART C: PROCUREMENT AUTHORITY

## Section 1.1005 Exercise of Procurement Authority

- a) The SPOs appointed by the CPO shall conduct all procurements under the jurisdiction of the CPO subject to the limitations set by the CPO. Those limitations are provided or authorized by this Part.
- b) Procurements contemplating any form of agreement including, but not limited to, outright purchase, installment and lease purchase, lease, rental and license, are included.

## Section 1.1010 Appointment of State Purchasing Officer

- a) The executive head of each State agency shall, after consultation with the CPO, recommend to the CPO one of the agency's officers or employees for appointment as SPO. Upon appointment by the CPO of the recommended individual and approval by the executive head of the State agency, the named individual shall be an SPO for that agency.
- b) In the absence of a recommended, approved, and appointed SPO, the CPO may exercise all procurement authority on behalf of the agency. Should the executive head fail to recommend an acceptable SPO candidate, the CPO may appoint the executive head of the State agency as SPO.

## Section 1.1030 Associate Procurement Officers

Any duly appointed Associate Procurement Officer shall conduct procurements in accordance with the Code, this Part and any restrictions imposed by the Governor in the appointment of the Associate Procurement Officer.

## Section 1.1040 Central Procurement Authority of the CPO

- a) The CPO may establish master, scheduled or open-ended contracts for any supplies and services, and those contracts shall be utilized by State agencies in accordance with the terms of those contracts for the procurement of supplies and services covered by those contracts.
- b) The following items will be procured by the CPO as the central purchasing agency. These items may be procured by an SPO only as provided in this Subpart or in a letter of delegation from the CPO authorizing the procurement activity.
  - 1) Supplies
    - A) all exceeding \$10,000; and
    - B) regardless of price:

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- i) Employee benefits authorized under the State Employees Group Insurance Act or the Personnel Code;
  - ii) Financing of any procurement;
  - iii) Paper, stationery, envelopes;
  - iv) Postage stamps;
  - v) Property, casualty, liability and other insurance, and bonds;
  - vi) All telecommunications material, equipment, software and related goods. (Equipment used to provide data communications internal to a building is considered to be Local Area Network equipment and is therefore excluded from this provision.)
  - vii) Utilities for buildings managed by the CPO;
  - viii) Vehicles.
- 2) Services
    - A) Electronic data processing services including, but not limited to, consulting and professional and artistic services, exceeding \$10,000;
    - B) Telecommunications related services including, but not limited to:
      - i) voice, data, video, and internet working services delivered from private and or public network services, dedicated and/or virtual networking. Wide Area Networking and/or Metropolitan Area Networking, local exchange services, long distance services, radio frequency derived communications services (e.g., cellular, PCS, land mobile, microwave, etc., service);
      - ii) repairs, additions, relocations, or related changes to telecommunication services;
      - iii) consulting, professional and artistic services relating to telecommunications issues regardless of price.
    - C) Vehicles related services, including but not limited to, fleet management and repairs, regardless of price.
  - 3) Real Estate
    - Leases of real estate and any capital improvements to the leased real estate for the use of State agencies.
  - c) Central Procurement Procedures
    - 1) Purchase Requests
      - For purchases that are reserved to the CPO, each agency must initiate the procurement process through submission of a purchase request to the CPO. The CPO shall designate the format and requirements for submission.
    - 2) Chief Procurement Officer's Authority to Reject
      - When the CPO, after consultation with the requesting agency, decides that processing the purchase request is clearly not in the best interest of the State, or that further review is needed, the CPO shall return such purchase request to the requesting



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agency. A statement of the reasons for its return shall accompany the returned request. Examples of reasons a purchase request may be returned include, but are not limited to:

- A) the request can be satisfied from existing State inventory or State contracts;
- B) the request exceeds agency needs;
- C) the needs requested could be procured more economically at a different time without detriment to the State; or
- D) the quality requested is inconsistent with State standards and usage.

3) Determination of Contractual Terms and Conditions

The CPO has authority to determine the terms and conditions of solicitations and contracts. The CPO will consult with the requesting agency if the agency requests special terms and conditions.

- d) The CPO may, after consultation with and notice to any affected SPO, use central procurement procedures for items in addition to those listed in this Section upon its determination that such procedures are likely to result in significant efficiencies or economies.
- e) The CPO and the CPOs of the construction agencies will determine whether a supply item or group of supply items shall be included as a part of, or procured separately from, any contract for construction.
- f) The CPO, as Director of the Department of Central Management Services, has additional duties and responsibilities established in statute apart from the Code, and nothing in this Part shall be interpreted to limit those other statutory duties and responsibilities.

### Section 1.1050 Procurement Authority of the SPO; Limitations

- a) SPO's Authority  
The SPOs appointed by the CPO shall have authority to make all procurements for the use of the SPO's agency that are not under the central procurement authority of the CPO, another CPO, or a construction agency. Such procurements shall be conducted in accordance with applicable statute, this Part and any limitations set by the CPO.
- b) Emergency Procurements  
1) Agencies shall report telecommunications emergencies to the Department of Central Management Services' Network Control Center. Emergency procurements shall be made or authorized by the Department of Central Management Services. If the Network Control Center number cannot be reached, the Agency shall take reasonable temporary measures to meet its telecommunications needs.
- 2) For all other emergency procurements, whenever practicable, SPOs shall contact the CPO for instructions for meeting needs in emergency situations for each procurement under the central procurement authority of the CPO. SPOs shall utilize existing

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contracts established by the CPO whenever practicable. Quick purchases under Section 1.2030 of this Part must be approved by the CPO for those items under the jurisdiction of the CPO as identified in Section 1.1040 of this Part.

c) Professional and Artistic Services

Each SPO shall have authority, subject to the supervision of the CPO, to procure those professional and artistic services that are not under the central procurement authority of the CPO. Supervision primarily consists of ensuring SPO compliance with the procurement procedures established by the Code and this Part for procuring these services, but also includes without limitation the authority to review and require modifications to specifications; schedule for opening proposals; evaluation criteria; and awards when deemed necessary to protect the State's interests and ensure compliance with the Code and this Part.

d) Correctional Industries

Each SPO shall have authority to procure supplies and services from the Department of Correction's Correctional Industries program.

e) CPO Contracts

SPOs do not have the authority to procure supplies or services for which the CPO establishes master, scheduled or open-ended contracts, except as permitted in the terms of those contracts.

f) Department of Central Management Services

SPOs do not have authority to procure supplies or services available from any of the program operations of the Department of Central Management Services. This includes, but is not limited to:

- 1) Paper and Printing Warehouse;
- 2) Division of Vehicles system; and
- 3) Central Computing Facility.

g) Review by CPO

Any procurement related activity of an SPO may be reviewed by the CPO, and the SPO shall supply information requested by the CPO. Should the CPO determine that the SPO's activities were not in accordance with the requirements of the Code, this Part or good procurement practices, or is otherwise not in the State's best interest, the CPO may consult with the SPO or executive head of the agency and, if necessary, may place additional limits on the SPO's authority. These additional limitations will be communicated in the form of written notice sent by the CPO to the SPO and the executive head of the agency.

### Section 1.1060 Delegation

- a) The CPO may delegate to any SPO the CPO's authority to conduct specific procurements or classes of procurements for the use of that agency. The CPO may also delegate to any SPO the CPO's authority to conduct on behalf of the CPO specific procurements or classes of procurements for multiple agency use. An SPO may request that the CPO delegate authority to that SPO.

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- b) The CPO and each SPO (with approval of the SPO's executive head) may appoint designees to assist in the performance of their respective duties and responsibilities.
- c) Any exercise of delegated authority shall be in accordance with the Code and this Part.
- d) Delegations shall be in writing and shall specify:
- 1) the activity or function authorized;
  - 2) any limits or restrictions on the exercise of the delegated authority;
  - 3) whether the authority may be further delegated;
  - 4) the duration of the delegation; and
  - 5) any reporting requirements.

**Section 1.1070 Toll Highway Authority**

The CPO delegates to the Illinois Toll Highway Authority and its SPO authority to procure construction and construction-related services for the construction and operation of the toll highways under the jurisdiction of the Illinois Toll Highway Authority. For those activities, the SPO shall follow the construction rules promulgated by the Illinois Department of Transportation and the Capital Development Board, as applicable. Rules issued by the SPO shall be consistent with rules promulgated by the CPO designated under the Code for construction agencies. The CPO may delegate to the CPO of the Department of Transportation authority to publish in its volume of the Bulletin all notices that must be published relating to the procurement of construction and construction-related services by the Illinois Toll Highway Authority.

**Section 1.1075 Department of Natural Resources**

The CPO delegates to the Department of Natural Resources and its SPO authority to procure construction and construction-related services for the construction activities under the jurisdiction of the Department of Natural Resources. For those activities, the SPO shall follow the construction rules promulgated by the Illinois Department of Transportation and the Capital Development Board, as applicable. Rules issued by the SPO shall be consistent with rules promulgated by the CPO designated under the Code for construction agencies. The CPO may delegate to the CPO of the Department of Transportation authority to publish in its volume of the Bulletin all notices that must be published relating to the procurement of construction and construction-related services by the Department of Natural Resources.

**Section 1.1080 Illinois Mathematics and Science Academy**

The CPO delegates to the Illinois Mathematics and Science Academy and its SPO authority to procure supplies and services for the operation of the Academy. The Academy may utilize contracts let by the CPO for higher education in lieu of master and other such contracts established by CMS. For the procurement of such supplies and services, the SPO shall follow the procurement rules adopted

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by the CPO for higher education. The CPO may delegate to the CPO for Public Universities authority to publish in its volume of the Bulletin all notices that must be published relating to the procurement of supplies and services by the Illinois Mathematics and Science Academy.

**SUBPART D: PUBLICIZING PROCUREMENT ACTIONS****Section 1.1510 Illinois Procurement Bulletin**

- a) The Illinois Procurement Bulletin consists of several volumes, one for each of the Chief Procurement Officers designated in the Code, one for any appointed Associate Procurement Officer, and one for each other State entity that must publish notices under the Code. Each volume will contain procurement information relating to procurements under the jurisdiction of the applicable Chief or Associate Procurement Officer (APO). Each volume shall be available in electronic form.
- b) The Bulletin may be accessed via instructions available from the CPO.
- c) Access to the detailed information contained in the Bulletin may be subject to an annual subscription fee as set by the CPO, not to exceed publication and distribution costs.
- d) To accommodate those who are not interested in subscribing to the Bulletin, a free subscription will be made available to interested public libraries in Illinois.

**Section 1.1525 Bulletin Content**

- a) The information in each volume of the Bulletin will be updated at least once per month and may be updated as frequently as daily. The format, lead-time and other administrative requirements for submitting notices to the Bulletin will be provided in writing by the CPO to each SPO.
- b) Notice of each procurement request governed by the Code that must be conducted by competitive sealed bidding, including multi-step sealed bidding, competitive sealed proposals, or competitive selection procedures, shall be placed in the Bulletin. The notice shall contain at least the following information:
- 1) the name of the procuring agency (and using agency, if different);
  - 2) a brief purchase description;
  - 3) a procurement reference number, if used;
  - 4) the date the procurement is first offered (procurements that require notice shall not be distributed to vendors prior to the date the notice is first published in the Bulletin);
  - 5) the date, time, and location for making submissions;
  - 6) the method of source selection;
  - 7) the name of the Procurement Officer in charge; and
  - 8) instructions on how to obtain detailed information.
- c) Notice of each contract awarded that was subject of a notice in

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subsection (b) above shall be placed in the Bulletin. This notice shall contain at least the following information:

- 1) the information published in subsection (b) above;
- 2) the name of the vendor selected for award;
- 3) the contract price;
- 4) the number of unsuccessful responsive vendors; and
- 5) other disclosures required to be published in the Bulletin.

d) The following information regarding emergency procurements shall be published in the Bulletin within 14 days after commencement of performance under the emergency contract:

- 1) name of the procuring agency (and using agency, if different);
- 2) name of the vendor selected for award;
- 3) brief description of what the vendor will do or provide;
- 4) total price (if only an estimate is known, it shall be published, but a subsequent notice repeating all required information shall be published when the final amount is known);
- 5) reasons for using the emergency method of source selection; and
- 6) name of the Procurement Officer in charge.

e) The following information in regard to sole source procurements shall be published in the Bulletin at least 14 days prior to entering into the contract with the designated sole source vendor:

- 1) name of the procuring agency (or using agency, if different);
- 2) name of the vendor;
- 3) brief description of what the vendor will do or provide; and
- 4) name of the Procurement Officer in charge.

## Section 1.1550 Official State Newspaper

- a) The Department of Central Management Services will select, by Competitive Sealed Bid, a secular newspaper of general circulation printed in English, to be known as the Official State Newspaper. The term of the appointment and the requirements will be specified by the Department in the Invitation for Bids.
- b) Upon direction of the CPO, this newspaper may be used as a substitute for the Bulletin in the event the Bulletin cannot be published.

## Section 1.1560 Supplemental Notice

Publication in the Bulletin may be supplemented by publication elsewhere at the discretion of the purchasing agency. Examples include publication in:

- a) the Official State Newspaper;
- b) a newspaper of general circulation;
- c) a newspaper of local circulation in the area pertinent to the procurement;
- d) industry media; or
- e) agency "WEB" pages.

## Section 1.1570 Error in Notice

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When a required publication contains an error, the error may be corrected by a single notice published in the Bulletin.

## Section 1.1580 Direct Solicitation

In addition to giving notice in the Bulletin, agencies may directly contact prospective vendors by providing copies of Invitations for Bids, Requests for proposals, or other procurement information. Direct solicitation may be oral or in writing, but care should be taken to ensure that all vendors solicited in this manner receive the same information as provided to others. No direct solicitation shall be made prior to the date any required notice first appears in the Bulletin.

## Section 1.1590 Retention of Bulletin Information

- a) The information published pursuant to Section 1.1525(b) should be retained in electronic or paper form until the information required to be published under Section 1.1525(c) for that procurement is published.
- b) Other information published in the Bulletin shall be retained in electronic or paper form for a period of one year after first publication.

## SUBPART E: SOURCE SELECTION AND CONTRACT FORMATION

## Section 1.2005 General Provisions

- a) Late Bids or Proposals, Late Withdrawals and Late Modifications
  - 1) Definition. Any bid or proposal received after the time and date for receipt, and at other than the specified location, is late. A bid that is delivered to the wrong location but that is subsequently delivered to the correct location by the date and time specified shall be considered, but the agency shall not be responsible for ensuring such subsequent delivery. Any withdrawal or modification of a bid or proposal received after the time and date set for opening of bids or proposals is late. If received at other than the specified location, the submission is late.
  - 2) Treatment. No late bid or proposal, late modification, or late withdrawal will be considered unless the Procurement Officer, and not a designee, determines it would have been timely but for the action or inaction of State personnel directly serving the procurement activity (e.g., providing the wrong address).
  - 3) Records. Records shall be made and, in accordance with the State Records Act [5 ILCS 160], kept for each late bid or proposal, late modification, or late withdrawal.
  - 4) Other Submissions. Any other submission that has a time or date deadline shall be treated in the same manner as a late bid.



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- b) Extension of Time
- 1) The Procurement Officer may, prior to the date or time for submitting or modifying a bid or proposal, extend the date or time for the convenience of the State.
  - 2) After opening bids or proposals, the Procurement Officer may request bidders or offerors who submitted timely bids or proposals to extend the time during which the State may accept the bids or proposals, provided that, with regard to bids, no other change is permitted. This extension does not provide an opportunity for others to submit bids or proposals.
- c) Electronic and Facsimile Submissions
- 1) The Invitation for Bids or Request for Proposals may state that electronic and facsimile machine submissions will be considered if they are received at the designated office by the time and date set for receipt. Any required attachments will be submitted as stated in the IFB or RFP.
  - 2) Electronic submissions authorized by specific language in the IFB or RFP will be opened in accordance with electronic security measures in effect at the purchasing agency at the time of opening. Unless the electronic submission procedures provide for a secure receipt, vendor assumes risk of premature disclosure due to submission in unsealed form.
  - 3) Fax submissions authorized by specific language in the IFB or RFP will be placed in a sealed container upon receipt and opened as other submissions. Vendor assumes risk of premature disclosure due to submission in unsealed form.
- d) Intent to Submit
- The Invitation for Bids or the Request for Proposals may require that vendors submit, by a certain time and date, a notice of their intent to submit a bid or proposal in response to the IFB or RFP. Bids and proposals submitted without complying with the notice of intent requirement may be rejected.
- e) Only One Bid or Proposal Received
- If only one bid or proposal is received, an award may be made to the single bidder or offeror if the Procurement Officer finds that the price submitted is fair and reasonable, and that either other prospective bidders had reasonable opportunity to respond, or there is not adequate time for resolicitation. Otherwise:
- 1) new bids or offers may be solicited, including under sole source (Section 1.2025) or emergency (Section 1.2030) procedures; or
  - 2) the procurement may be canceled.
- f) Alternate or Multiple Bids or Proposals
- 1) Alternate bids or proposals may be accepted if:
    - A) permitted by the solicitation and in accordance with instructions in the solicitation; or
    - B) only one vendor responded, in which case the alternate submission may be evaluated and treated in accordance with Section 1.2025 (Sole Source Procurement) of this Part; or

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- C) the low bidder, who has met all requirements of the solicitation, has provided a lower cost alternative that meets all of the material requirements of the specifications.
- 2) Multiple bids or proposals may be accepted if:
    - A) permitted by the solicitation and submitted in accordance with instructions in the solicitation; or
    - B) only one vendor responded, then, one or more of the submissions may be evaluated, provided that, in the case of bids, only the lowest cost bid meeting specifications may be considered.
  - 3) If a vendor clearly indicates a primary submission among alternate or multiple bids or proposals, then that primary submission shall be considered for award as though it were the only bid or proposal submitted by the vendor.
- g) Multiple Items
- An Invitation for Bids or Request for Proposals may call for pricing of multiple items of similar or related type with award based on individual line item, group total of certain items, or grand total of all items.
- h) "All or None" Bids or Proposals
- All or none bids or proposals may be accepted if the evaluation shows an all or none award to be the lowest cost or best value of those submitted.
- i) Conditioning Bids or Proposals Upon Other Awards
- Any bid or proposal that is conditioned upon receiving award of the particular contract being solicited and one or more other State contracts shall:
- 1) be rejected unless the vendor removes the condition; or
  - 2) be evaluated and award made to that vendor if the vendor is also independently evaluated as the winner of the other IFBs or RFPs provided the agency need not delay procurement actions to accommodate the vendor's all or none condition.
- j) Unsolicited Offers
- 1) Processing of Unsolicited Offers. The Procurement Officer may consider unsolicited offers. If the SPO of an agency that receives an unsolicited offer is not authorized to enter into a contract for the supplies or services offered, the SPO of such agency may forward the offer to the CPO, who may consider such unsolicited offer.
  - 2) Conditions for Consideration. An unsolicited offer must be in writing and must be sufficiently detailed to allow a judgment to be made concerning the potential utility of the offer to the State.
  - 3) Award. An award may not be made based on an unsolicited offer in place of the notice and competition requirements of the Code and this Part except if that unsolicited offer meets the requirements for a small (Section 1.2020), sole source (Section 1.2025), or

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emergency (Section 1.2030) procurement.

- k) Clarification of Bids and Proposals  
The Procurement Officer may request that a vendor clarify its bid or proposal as a part of the evaluation process. A vendor shall not be allowed to materially change its bid or proposal in response to a request for clarification. A clarification is not an opportunity to make changes or for submission of best and finals as authorized elsewhere in this Part.

- l) Extension of Time on Indefinite Quantity Contracts

The time of performance of an indefinite quantity contract may be extended upon agreement of the parties, provided the extension is for 90 days or less and the Procurement Officer determines in writing that it is not practical to award another contract at the time of such extension.

- m) Increase in Quantity on Definite Quantity Contracts

1) The quantity that may be ordered from a definite quantity contract without additional notice and competition may be increased by up to 20% provided the Procurement Officer determines that separate bidding for the additional quantity is not likely to achieve lower pricing. A particular procurement may specify a different percentage.

- 2) The quantity may be increased by any percentage provided the dollar value of the increase does not exceed the applicable small purchase (Section 1.2020) threshold.

- n) Subsequent Purchase Request

If, within 30 days after making an award to a particular vendor pursuant to a competitive sealed bid on behalf of an agency, the CPO receives a purchase request from another agency for the same item and for the same or lesser quantity, the CPO may contract with that vendor on the same terms and conditions, including price, without additional notice and competition, if such contract is acceptable to the vendor.

- o) Assignment, Novation or Change of Name

1) Assignment. No State contract is transferable, or otherwise assignable, without the written consent of the Procurement Officer, provided, however, that a vendor may assign money receivable under a contract after due notice to the State. Assignment may require the execution of a contract with the assignee and in such cases the assignee must meet all requirements for contracting with the State.

2) Recognition of a Successor in Interest; Novation. When in the best interest of the State, a successor in interest may be recognized in a novation agreement in which the transferor and the transferee agree that:

- A) the transferee assumes all of the transferor's obligations;
- B) the transferee meets all requirements for contracting with the State;
- C) the transferor waives all rights under the contract as against the State; and

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- D) unless the transferor guarantees performance of the contract by the transferee, the transferee shall, if required by the State, furnish a satisfactory performance bond.

3) Change of Name. A vendor may submit a written request to change the name in which it holds a contract with the State. The name change shall not alter any of the terms and conditions of the contract or the obligations of the vendor.

4) Reports. All change of name or novation agreements under this subsection (o) shall be reported to the CPO within 30 days after the date the agreement becomes effective so that the bid list may be updated.

- p) Contracting for Installment Purchase Payments, Including Interest  
Contracts may provide for installment purchase payments, including interest charges, over a period of time. The interest rate may not exceed that established by law, including the Bond Authorization Act [30 ILCS 305].

- q) Use of Source Selection Method that is Not Required

If a purchasing agency uses a method of source selection that it is not, by law, required to use (e.g., use of a competitive sealed bid for a small purchase), the purchasing agency is not bound to strict compliance with the Code and rules governing the method of source selection used.

- r) Vendor Signature

A bid or proposal submitted unsigned will be evaluated if the vendor submits a written signature acceptable to the Procurement Officer within the time specified by that officer.

- s) Stringing or planning procurements to avoid use of competitive procedures (stringing) is prohibited.

- t) Confidential Data

Vendors must clearly identify any information that is exempt from the disclosure requirement of the Illinois Freedom of Information Act [5 ILCS 140] and must request special handling of that material.

## Section 1.2010 Competitive Sealed Bidding

- a) Application

Competitive sealed bidding is the required method of source selection except as allowed by the Code and this Part. The provisions of this Section apply to every procurement required to be conducted by competitive sealed bidding.

- b) The Invitation for Bids

1) Use. The Invitation for Bids is used to initiate a competitive sealed bid procurement.

2) Content. The Invitation for Bids shall include, at a minimum, the following:

- A) instructions and information to bidders concerning the bid submission requirements, including the time and date set for

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receipt of bids, the address of the office to which bids are to be delivered, and the maximum time for bid acceptance by the State;

B) the purchase description, evaluation factors, delivery or performance schedule, and such inspection and acceptance requirements as are not included in the purchase description; and

C) the contract terms and conditions, including warranty and bonding or other security requirements, as applicable.

3) Incorporation by Reference. The Invitation for Bids may incorporate documents by reference provided that the Invitation for Bids specifies where such documents can be obtained.

## c) Bidding Time

Bidding time is the period of time between the date of notice or distribution of the Invitation for Bids and the time and date set for receipt of bids. In each case, bidding time will be set to provide bidders a reasonable time to prepare their bids. A minimum of 14 days shall be provided unless a shorter time is authorized by the Code or this Part.

## d) Bidder Submissions

1) Bid Form. The Invitation for Bids may include a form or format for submitting bids. If a form or format is specified, vendor shall submit bids as instructed.

## 2) Bid Samples and Descriptive Literature

A) Bid samples or descriptive literature may be required when it is necessary to evaluate required characteristics of the items bid.

B) Unsolicited bid samples or descriptive literature are submitted at the bidder's risk, may not be examined or tested, will not be deemed to vary any of the provisions of the Invitation for Bids, and may not be utilized by the vendor to contest a decision or understanding with the State.

## e) Public Notice

1) Publication. Every procurement for supplies and services in excess of the small purchase amount that must be procured using an Invitation for Bids shall be publicized in the Illinois Procurement Bulletin (see Section 1.1510).

2) Public Availability. A copy of the Invitation for Bids shall be made available for public inspection.

3) Distribution. Invitations for Bids or Notices of the Availability of Invitations for Bids may be mailed or otherwise furnished to a sufficient number of bidders for the purpose of securing competition. Notices of Availability shall, at a minimum, indicate where Invitations for Bids may be obtained; generally describe what is needed; and indicate the due date for bids. Where appropriate, the Procurement Officer may require payment of a fee or a deposit for supplying the Invitation for

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## Bids.

## f) Pre-Bid Conference

A pre-bid conference may be conducted to enhance understanding of the procurement requirements. The pre-bid conference shall be announced as a part of the Invitation for Bids notice. The conference may be designated as "attendance mandatory" or "attendance optional". The conference should be held long enough after the Invitation for Bids has been issued to allow bidders to become familiar with it, but sufficiently before bid opening to allow consideration of the conference results in preparing their bids. Nothing stated at the pre-bid conference shall change the Invitation for Bids unless a change is made by written modification to the Invitation for Bids. Amendments shall be supplied to all those prospective bidders known to have received an Invitation for Bids. If the conference is mandatory, the amendments shall be supplied to attendees only.

## g) Amendments to Invitations for Bids

1) Form. Amendments to Invitations for Bids shall be clearly identified and shall reference the portion of the IFB it amends.

2) Distribution. Amendments shall be made available to all prospective bidders known to have received an Invitation for Bids.

3) Timeliness. Amendments shall be made available within a reasonable time to allow prospective bidders to consider them in preparing their bids. If the time and date set for receipt of bids will not permit such preparation, the amendment shall extend the response time. If necessary, the response time may be extended by fax or telephone and confirmed in the amendment.

## h) Pre-Opening Modification or Withdrawal of Bids

1) Procedure. Bids may be modified or withdrawn by written notice received in the office designated in the Invitation for Bids prior to the time and date set for bid opening.

2) Disposition of Bid Security. If a bid is withdrawn in accordance with this Section, the bid security, if any, shall be returned to the bidder.

3) Records. All documents relating to the modification or withdrawal of bids shall be made a part of the appropriate procurement file.

## i) Receipt, Opening and Recording of Bids

1) Receipt. Upon its receipt, each bid and modification shall be time-stamped but not opened and shall be stored in a secure place until the time and date set for bid opening. If a bid is opened in error, the file shall so state.

## 2) Opening and Recording

A) Bids and modifications shall be opened publicly at the time, date, and place designated in the Invitation for Bids. Opening shall be witnessed by a State employee or any other person present, but the person opening bids shall not serve as witness. The name of each bidder, the bid price, and



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such other information as is deemed appropriate by the Procurement Officer, shall be recorded and the name of each bidder read aloud or otherwise made available. The name of the witness shall also be recorded at the opening.

- B) The winning bid shall be available for public inspection after award, along with the record of each unsuccessful bid.

## j) Bid Evaluation and Award

- 1) General. The contract is to be awarded to the lowest responsible and responsive bidder whose bid meets the requirements and criteria set forth in the Invitation for Bids, except as permitted in the Code and this Part. The Invitation for Bids shall set forth the requirements and criteria that will be used to determine the lowest responsive bidder. No bid shall be evaluated for any requirements or criteria that are not disclosed in the Invitation for Bids.

- 2) Responsibility. Responsibility of prospective vendors is covered by Section 1.2046 (Responsibility) of this Part.

- 3) Responsiveness. A bid must conform in all material respects to the Invitation for Bids.

- A) Product or Service Acceptability. The Invitation for Bids shall set forth any evaluation criteria to be used in determining product or service acceptability. It may require the submission of bid samples, descriptive literature, technical data, references, licenses, or other information or material. It may also provide for accomplishing any of the following prior to award:

- i) inspection or testing of a product or service prior to award for such characteristics as quality or workmanship;
- ii) examination of such elements as appearance, finish, taste, or feel;
- iii) other examinations to determine whether it conforms with any other purchase description requirements.

- B) The acceptability evaluation is not conducted for the purpose of determining whether one bidder's product or service capability is superior to another, but only to determine that a bidder's offering is acceptable as set forth in the Invitation for Bids. Any bidder's offering that does not meet the acceptability requirements shall be rejected.

- 4) Determination of Lowest Bidder. Following determination of product or service acceptability as set forth in this subsection (j), bids will be evaluated to determine which bidder offers the lowest cost to the State in accordance with the evaluation criteria set forth in the Invitation for Bids. Only objectively measurable criteria that are set forth in the Invitation for Bids shall be applied in determining the lowest bidder. Examples of such criteria include, but are not limited to, transportation

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cost and ownership or life-cycle cost formulas. Evaluation factors need not be precise predictors of actual future costs, but to the extent possible such evaluation factors shall be reasonable estimates based upon information the State has available concerning future use and shall provide for the equitable treatment of all bids. Pricing for optional supplies or services, or for renewal terms, may be considered, particularly when the pricing for such items or terms is unbalanced when compared to other pricing in the bid.

- 5) Price Negotiation. Negotiations are permitted with the low bidder to obtain a lower price for the item bid.

## k) Documentation of Award

Following award, a record showing the successful bidder shall be made a part of the procurement file.

- 1) Award to Other Than Low Bidder

- 1) The Procurement Officer, but not a designee, may award to other than the lowest responsible and responsive bidder upon a written determination that award to another bidder is in the State's best interest. The name of the bidder selected, pricing, and the reasons for selecting this bidder instead of the low bidder must be published in the Bulletin.

- 2) This action may be appropriate when the difference in quality or speed of delivery is so great as compared to the difference in price, and considering the needs of the agency, that a best value award is justified. However, if the difference in price is significant, the Procurement Officer may not utilize this provision.

## m) Publicizing Award

The successful bidder shall be notified of award and such notification may be in the form of a letter, purchase order or other clear communication. In procurements over the small purchase limit set in Section 1.2020 (Small Purchases) of this Part, notice of award shall be published in the Bulletin.

## Section 1.2012 Multi-Step Sealed Bidding

## a) Definition

Multi-step sealed bidding is a two-phase process consisting of a technical first phase composed of one or more steps in which bidders submit unpriced technical offers to be evaluated by the State, and a second phase in which those bidders whose technical offers are determined to be acceptable during the first phase have their price bids considered.

## b) Conditions for Use

The multi-step sealed bidding method may be used when it is not practical to prepare initially a definitive purchase description that will be suitable to permit an award based on price. Multi-step sealed bidding may be used when it is considered desirable:

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- 1) to invite and evaluate possible diverse technical offers to determine their acceptability to fulfill the purchase description requirements; and
- 2) to conduct discussions for the purposes of facilitating understanding of the technical offer and purchase description requirements and, where appropriate, obtain supplemental information, permit amendments of technical offers, or amend the purchase description.
- c) Pre-Bid Conference in Multi-Step Sealed Bidding
 

Prior to the submission or evaluation of unpriced technical offers, a pre-bid conference as contemplated by Section 1.2010(f) (Pre-Bid Conference) may be conducted by the Procurement Officer.
- d) Procedure for Phase One of Multi-Step Sealed Bidding
  - 1) Form. Multi-step sealed bidding shall be initiated by the issuance of an invitation for bids in the form required by Section 1.2010 (Competitive Sealed Bidding), except as hereinafter provided. In addition to the requirements set forth in Section 1.2010, the multi-step invitation for bids shall state:
    - A) that unpriced technical offers are requested;
    - B) whether priced bids are to be submitted at the same time as unpriced technical offers; if they are, such priced bids shall be submitted in a separate sealed envelope;
    - C) that it is a multi-step sealed bid procurement, and priced bids will be considered only in the second phase and only from those bidders whose unpriced technical offers are found acceptable in the first phase;
    - D) the criteria to be used in the evaluation of the unpriced technical offers;
    - E) that the Procurement Officer may conduct oral or written discussions of the unpriced technical offers;
    - F) that the item being procured shall be furnished generally in accordance with the bidder's technical offer as found to be finally acceptable and shall meet the requirements of the invitation for bids.
  - 2) Amendments to the Invitation for Bids. After receipt of unpriced technical offers, amendments to the invitation for bids shall be distributed only to bidders who submitted unpriced technical offers, and they shall be permitted to submit new unpriced technical offers or to amend those submitted. If, in the opinion of the Procurement Officer, a contemplated amendment will significantly change the nature of the procurement, the invitation for bids may be canceled in accordance with Section 1.2040 (Cancellation of Solicitation; Rejection of Bids or Proposals) of this Part and a new invitation for bids issued.
  - 3) Receipt and Handling of Unpriced Technical Offers. Unpriced technical offers submitted by bidders shall be opened in the presence of at least one witness. Such offers shall not be

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- 4) Evaluation of Unpriced Technical Offers. The unpriced technical offers submitted by bidders shall be evaluated solely in accordance with the criteria set forth in the invitation for bids. The unpriced technical offers shall be categorized as:
  - A) acceptable;
  - B) potentially acceptable, that is, reasonably susceptible of being made acceptable; or
  - C) unacceptable, in which case the Procurement Officer shall record in writing the basis for finding an offer unacceptable, notify the vendor and make it part of the procurement file.
- 5) The Procurement Officer may initiate phase two of the procedure if, in the Procurement Officer's opinion, there are sufficient acceptable unpriced technical offers to assure effective price competition in the second phase without technical discussions. If the Procurement Officer finds discussion of the technical offers is necessary, the Procurement Officer shall commence discussions of the unpriced technical proposals.
- 6) Discussion of Unpriced Technical Offers. The Procurement Officer may conduct discussions with any vendor who submits an acceptable or potentially acceptable technical offer. During the course of such discussions, the Procurement Officer shall not disclose any information derived from one unpriced technical offer to any other bidder. Any such bidder may submit supplemental information amending its technical offer at any time until the closing date established by the Procurement Officer. Such submission may be made at the request of the Procurement Officer or upon the bidder's own initiative.
- 7) Unacceptable Unpriced Technical Offer. When the Procurement Officer determines a bidder's unpriced technical offer to be unacceptable, such offer shall not be afforded an additional opportunity to supplement its technical offer.
- e) Procedure for Phase Two
  - 1) Initiation. Upon the completion of phase one, the Procurement Officer shall either:
    - A) open priced bids submitted in phase one (if priced bids were required to be submitted) from bidders whose unpriced technical offers were found to be acceptable; or
    - B) if priced bids have not been submitted, invite each acceptable bidder to submit a priced bid.
  - 2) Conduct. Phase two shall be conducted as any other competitive sealed bid procurement except:
    - A) no public notice need be given of this invitation to submit priced bids because such notice was previously given;
    - B) after award, the unpriced technical offer of the successful bidder shall be disclosed as follows: The Procurement Officer shall examine written requests of confidentiality

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for trade secrets and proprietary data in the technical offer of such bidder to determine the validity of any such requests. If the parties do not agree as to the disclosure of data, the Procurement Officer shall reject the offer. Such technical offer shall be open to public inspection subject to any continuing prohibition on the disclosure of confidential data; and

- C) unpriced technical offers of bidders who are not awarded the contract shall not be open to public inspection.

## Section 1.2015 Competitive Sealed Proposals

- a) Competitive Sealed Proposals may be used whenever permitted by the Code and as described in this Part.

- b) The Competitive Sealed Proposal method of source selection may be used to procure the following categories: (note that the following services, if they are professional and artistic, must be procured pursuant to Section 1.2035 of this Part).

- 1) electronic data processing equipment, software, and services;
- 2) telecommunications equipment, software, and services;
- 3) consulting services; and
- 4) employee benefits and management of those benefits.

- c) Competitive Sealed Proposals may be used on a case-by-case basis when it is determined by the Procurement Officer that competitive sealed bidding is either not practicable or advantageous.

- 1) "Practicable" Distinguished from "Advantageous." As used in Section 20-15 (Competitive Sealed Proposals) of the Illinois Procurement Code and in this Section, "practicable" denotes what may be accomplished or put into practical application, and "advantageous" connotes a judgmental assessment of what is in the State's best interest. Competitive sealed bidding may be practicable, that is, reasonably possible, but not necessarily, advantageous, that is, in the State's best interest. Before a procurement may be conducted by competitive sealed proposals, the Procurement Officer shall determine in writing that competitive sealed bidding is either not practicable or not advantageous to the State.

## 2) General Discussion

- A) If competitive sealed bidding is not practicable or is not advantageous, competitive sealed proposals should be used.

- B) The key element in determining whether use of a proposal is advantageous is the need for flexibility. The competitive sealed proposal method differs from competitive sealed bidding in two important ways:

- i) it permits discussions with competing offerors and changes in their proposals, including price; and
- ii) it allows comparative judgmental evaluations to be made when selecting among acceptable proposals for

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award of the contract.

- C) Where evaluation factors involve the relative abilities of offerors to perform, including degrees of experience or expertise, where the types of supplies or services may require the use of comparative, judgmental evaluations to evaluate them adequately, or where the type of need to be satisfied involves weighing aesthetic values to the extent that price is a secondary consideration, use of competitive sealed proposals is the appropriate procurement method.

- 3) When Competitive Sealed Bidding is Not Practicable. Competitive sealed bidding is not practicable unless the nature of the procurement permits award to a low bidder who agrees by its bid to perform without condition or reservation in accordance with the purchase description, delivery or performance schedule, and all other terms and conditions of the Invitation for Bids. Factors to be considered in determining whether competitive sealed bidding is not practicable include:

- A) whether the contract needs to be other than a fixed-price type;
- B) whether oral or written discussions may need to be conducted with offerors concerning technical and price aspects of their proposals;
- C) whether offerors may need to be afforded the opportunity to revise their proposals, including price;
- D) whether award may need to be based upon a comparative evaluation, as stated in the Request for Proposals, of differing price, quality, and contractual factors in order to determine the most advantageous offering to the State. Quality factors include technical and performance capability and the content of the technical proposal; and
- E) whether the primary consideration in determining award may not be price.

- 4) When Competitive Sealed Bidding Is Not Advantageous. A determination may be made to use competitive sealed proposals if it is determined that it is not advantageous to the State, even though practicable, to use competitive sealed bidding. Factors to be considered in determining whether competitive sealed bidding is not advantageous include:

- A) if prior procurements indicate that competitive sealed proposals may result in more beneficial contracts for the State; and
- B) whether the factors listed in subsection (c)(3) of this Section are desirable, in conducting a procurement, rather than necessary; if they are, then such factors may be used to support a determination that competitive sealed bidding is not advantageous.

- d) Content of the Request for Proposals

The Request for Proposals shall be prepared in accordance with Section



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1.2010 (Competitive Sealed Bidding), provided that it shall also include:

- 1) a statement that discussions may be conducted with offerors who submit proposals determined to be reasonably susceptible of being selected for award, but that proposals may be accepted without such discussions; and
  - 2) a statement of when and how price should be submitted.
- e) Receipt and Registration of Proposals
- 1) Proposals and modifications shall be opened publicly at the time, date and place designated in the Request for Proposals. Opening shall be witnessed by a State employee or by any other person present, but the person opening proposals shall not serve as witness. A record shall be prepared which shall include the name of each offeror, the number of modifications received, if any, and a description sufficient to identify the supply or service item offered. The record of proposals shall be open to public inspection after award of the contract.
  - 2) Proposals and modifications shall be opened in a manner to avoid disclosing contents to competitors. Only State personnel and contractual agents may review the proposals prior to award.
- f) Evaluation of Proposals
- 1) Evaluation Factors in the Request for Proposals. The Request for Proposals shall state all of the evaluation factors, including price, and their relative importance.
  - 2) Evaluation. The evaluation shall be based on the evaluation factors set forth in the Request for Proposals. Factors not specified in the Request for Proposals shall not be considered. Numerical rating systems may be used but are not required.
  - 3) Classifying Proposals. For the purpose of conducting discussions, proposals may be initially classified as:
    - A) acceptable;
    - B) potentially acceptable, that is, reasonably susceptible of being made acceptable; or
    - C) unacceptable. Offerors whose proposals are unacceptable shall be so notified promptly.
- g) Proposal Discussions with Individual Offerors
- 1) "Offerors" Defined. For the purposes of Section 20-15(f) (Competitive Sealed Proposals, Discussion with Responsible Offerors and Revisions to Proposals) of the Illinois Procurement Code and of this Section, the term "offerors" includes only those businesses submitting proposals that are acceptable or potentially acceptable. The term shall not include businesses that submitted unacceptable proposals.
  - 2) Purposes of Discussions. Discussions are held to:
    - A) promote understanding of the State's requirements and the offerors' proposals; and
    - B) facilitate arriving at a contract that will be most advantageous to the State, taking into consideration price

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and the other evaluation factors set forth in the Request for Proposals.

- 3) Conduct of Discussions. Offerors shall be accorded fair and equal treatment with respect to any opportunity for discussions and revisions of proposals. If during discussions there is a need for any substantial clarification of, or change to, the Request for Proposals, the Request shall be amended to incorporate such clarification or change. Auction techniques (revealing one offeror's price to another) and disclosure of any information from competing proposals are prohibited. Any substantial oral clarification of a proposal shall be reduced to writing by the offeror.
- 4) Best and Final Offers. The Procurement Officer may request best and final offers from those offerors deemed acceptable after completion of any discussions. Best and final offers shall be submitted by a specified date and time. The Procurement Officer may conduct additional discussions or change the State's requirements and require another submission of best and final offers. The scope of the best and final and the number of vendors allowed to participate shall be defined by the Procurement Officer. If an offeror does not submit either a notice of withdrawal or another best and final offer, that offeror's immediately previous offer will be construed as its best and final offer.
- h) Award
 

An award shall be made by the Procurement Officer pursuant to a written determination showing the basis on which the award was found to be most advantageous to the State, based on the factors set forth in the Request for Proposals.

  - i) Publicizing Awards
 

The successful offeror shall be notified of award and such notification may be in the form of a letter, purchase order or other clear communication. When the award exceeds the small purchase limit set in Section 1.2020 of this Part, notice of award shall be published in the Bulletin.

## Section 1.2020 Small Purchases

## a) Application

- 1) Procurements of \$10,000 or less for supplies or services, other than professional and artistic, and \$30,000 or less for construction may be made using the method of source selection determined by the Procurement Officer to be most appropriate to the circumstances.
- 2) Procurements of less than \$20,000 for professional and artistic services and that have a non-renewable term of one year or less may be made using the method of source selection determined by the Procurement Officer to be most appropriate to the

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circumstances.

- 3) The CPO shall announce any change identified by the United States Department of Labor in the Consumer Price Index for All Urban Consumers for the period ending December 31, 1998, and for each year thereafter. That percentage change shall be used to calculate the small purchase maximums that shall be applicable for the fiscal year beginning July 1, 1999. The small purchase maximums shall be likewise recalculated for each July 1 thereafter.

- b) In determining whether a contract is under the limit, the value of the contract for the full term and all optional renewals, determined in good faith, shall be utilized. The stated value of the supplies or services, plus any optional supplies and services, shall be utilized. Where the term is calculated month-to-month or in a similar fashion, the amount shall be calculated for a twelve month period.

- c) If only a unit price or hourly rate is known, the contract shall be considered small and shall have a not to exceed limit applicable to the type of procurement (see subsection (a) above).

- d) If, after signing the contract, the actual cost of completing the contract is determined to exceed the small purchase amount, and the Procurement Officer determines that a supplemental procurement is not economically feasible or practicable because of the immediacy of the agency's needs or other circumstances, the Procurement Officer must follow the procedures for sole source or emergency procurement, whichever is applicable, to complete the contract.

- e) Procurement requirements shall not be artificially divided to avoid using the other source selection methods set forth in Section 20-5 of the Illinois Procurement Code.

- f) If there is a repetitive need for small procurements of the same type, the Procurement Officer shall consider issuing a competitive sealed bid or proposal for procurement of those needs.

- g) Agencies shall establish policies to control the use of this small purchase provision and shall make those policies available to the CPO upon request.

## Section 1.2025 Sole Economically Feasible Source Procurement

- a) Application

The provisions of this Part apply to procurement from a sole economically feasible source (referred to as sole source) unless the estimated amount of the procurement is within the limit set in Section 1.2020 (Small Purchases) or unless emergency conditions exist as defined in Section 1.2030 (Emergency Procurements) of this Part.

- b) Conditions for Use of Sole Source Procurement

Sole source procurement is permissible when a requirement is available from only a single supplier or when only one supplier is deemed economically feasible. A requirement for a particular proprietary item does not justify a sole source procurement if there is more than

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one potential bidder or offeror authorized to provide that item. The following are examples of circumstances that could necessitate sole source procurement:

- 1) where the compatibility of equipment, accessories, replacement parts, or service is a paramount consideration;
- 2) where a sole supplier's items are needed for trial use or testing;
- 3) where a sole supplier's item is to be procured for commercial resale;
- 4) where public utility regulated services are to be procured;
- 5) where the item is copyrighted or patented and the item or service is not available except from the holder of the copyright or patent;
- 6) the procurement of the media for advertising;
- 7) the procurement of art or entertainment services; and
- 8) changes to existing contracts (see subsection (c)).

## c) Changes

- 1) Changes to an existing contract that are germane and reasonable in scope and cost in relation to the original contract or program, that are necessary or desirable to complete the contract or program, and that can be best accomplished by the contract holder may be procured under this Section when the Procurement Officer determines that the cost of delay or disruption to the contract or program, and the cost of a new solicitation, clearly indicate that the existing vendor is the sole economically feasible source.

- 2) A change (whether in cost or rate) that does not exceed the applicable small purchase limit as defined in Section 1.2020 of this Part, or that is an emergency as defined in Section 1.2030 of this Part, may be made in accordance with procedures governing those Sections and need not comply with these sole source procedures. A change in the length of the contract that does not exceed 30 days and other minor, immaterial changes to the scope or administrative provisions of a contract shall not be considered changes subject to these sole source procedures.

- d) Procurement Officer to Determine

- 1) The determination as to whether a procurement shall be made as a sole source shall be made by the Procurement Officer. Such determination and the basis therefore shall be in writing. Such officer may specify the application of such determination and the duration of its effectiveness.

- 2) Any purchase request submitted to the CPO suggesting that a procurement be restricted to one potential vendor shall be accompanied by an explanation as to why no other vendor will be suitable or acceptable to meet the need.

- e) Publication of Sole Source Notice

The Procurement Officer shall publish in the Bulletin notice of intent to contract with that vendor at least 14 days prior to execution of

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the contract.

- 1) If no challenge to this determination is made by a vendor within the 14 day period, the Procurement Officer may execute a contract with that vendor.
- 2) If a challenge is received, the Procurement Officer shall consider the information and shall commence a competitive procurement if the Procurement Officer determines that more than one economically feasible source may be available and the sole source designation is, therefore, not appropriate, unless an emergency situation exists.
- f) Negotiation in Sole Source Procurement  
The Procurement Officer shall conduct negotiations, as appropriate, to reach contract terms, including price, and shall maintain a record of each sole source procurement showing:
  - 1) the vendor's name;
  - 2) the amount and type of the contract;
  - 3) what was procured; and
  - 4) the identification number of the contract file.

**Section 1.2030 Emergency Procurements**

## a) Applications

The provisions of this Part apply to every procurement over the small purchase limit set in Section 1.2020 (Small Purchases) of this Part and that is not a sole source procurement under Section 1.2025 of this Part made under emergency, including quick purchase, conditions.

## b) Definition of Emergency Conditions

Procurements may be made under this Section 1.2030 in the following circumstances:

- 1) Traditional circumstances include but are not limited to:
  - A) public health or safety, including the health or safety of any particular person, is threatened;
  - B) immediate repairs are needed to State property to protect against further loss or damage to State property, or to prevent loss or damage to State property;
  - C) immediate action is needed to prevent or minimize serious disruption in State services;
  - D) action is needed to ensure the integrity of State records;
  - E) equipment or services are necessary in the furtherance of covert activities lawfully conducted by a State agency. Any required disclosures shall be made so as not to jeopardize those covert activities;
  - F) immediate action is necessary to avoid lapsing or loss of federal or donated funds;
  - G) the need for items to protect or further State interests is immediate and use of other competitive source selection procedures under the Code and this Part cannot be accomplished without significant risk of causing serious

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disadvantage to the State.

- 2) After Unsuccessful Competitive Sealed Bidding or Proposals or Request for Proposals. When bids or proposals received pursuant to a competitive sealed bid or competitive sealed proposal method are unreasonable or noncompetitive, or the price exceeds available funds, and time or other circumstances will not permit the delay required to resolicit competitive sealed bids or proposals, and if emergency conditions exist after an unsuccessful attempt to use competitive sealed bidding, an emergency procurement may be made.
- 3) Extension to Allow Competition. Extending an existing contract for such period of time as is needed to conduct a competitive method of source selection where terminating or allowing the contract to terminate would not be advantageous to the State.
- 4) Quick Purchase:
  - A) A supplier announces bankruptcy, cessation of business, or loss of franchise, or gives other similar reason such that making a purchase immediately is more advantageous to the State than instituting a competitive procurement under the provisions of this Code for the supplies or services;
  - B) Items are available on the spot market or at discounted prices for a limited time so that good business judgment mandates a purchase immediately to take advantage of the availability and price;
  - C) availability of rare items, such as books of historical value;
  - D) the procurement is for entertainment.
- c) Scope of Emergency Conditions  
Emergency procurements shall be limited to the items, quantity and term necessary to meet the emergency need.
- d) Authority to Make Emergency Procurements  
Authority to make emergency procurements is established in Subpart C. Whenever practical, existing State contracts shall be utilized and, whenever practical, approval by the CPO shall be obtained prior to procuring items reserved to the CPO. The SPO of each agency shall be responsible for making the filings required in Section 20-30 of the Code.
- e) Source Selection Methods  
Any method of source selection, whether or not identified in this Part, may be used to conduct the procurement in emergency situations. The procedure used shall be selected to assure that the required items are procured in time to meet the emergency. Such competition as is practicable shall be obtained.
- f) Determination and Record of Emergency Procurement  
1) Determination. The Procurement Officer shall make a written determination stating the basis for an emergency procurement and for the selection of the particular vendor. Such determinations shall be kept in the contract file of the Procurement Officer.



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- 2) Record. An affidavit of each emergency procurement shall be filed with the CPO and the Auditor General within 10 days after the procurement and shall include the following information:
  - A) the vendor's name;
  - B) the amount and type of the contract, provided that if only an estimate of the amount is available immediately, the record shall be supplemented with the final amount once known;
  - C) a description of what the vendor will do or provide;
  - D) the reasons for using the emergency method of source selection.
- 3) Notice of the emergency procurement shall be published in the Bulletin in accordance with Subpart D of this Part.

## Section 1.2035 Competitive Selection Procedures for Professional and Artistic Services

## a) Application

- 1) The provisions of this Section apply to every procurement of professional and artistic services except those subject to the Architectural, Engineering and Land Surveying Qualifications Based Selection Act [30 ILCS 535] and except as provided in Section 1.2035(e).
- 2) "Professional and artistic services" means those services provided under contract to a State agency by a person or business, acting as an independent contractor, qualified by education, experience, and technical ability [30 ILCS 525/1-15.60].

## b) Professional and artistic services are further defined as follows:

- 1) "Qualified by education" means the individual who would perform the services must have obtained the level of education specified in the Request for Proposals.
- 2) "Qualified by experience" means the individual who would perform the services must have the level of general experience specified in the Request for Proposals.
- 3) "Qualified by technical ability" means the individual who would perform the services must demonstrate a high degree of skill or ability in performing services that are the same, similar or closely related in nature to those specified in the Request for Proposals.
- 4) An essential element distinguishing professional and artistic services from other services is confidence, trust, and belief in not only the ability, but the talent, of the individual performing the service. These services are primarily for intellectual or creative skills. Contracts for services primarily involving manual skills or labor are not professional and artistic services contracts. (See Illinois Attorney General Opinion S-256, January 20, 1971.)

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- 5) If the professional or artistic contract is with a firm or other business entity, the individuals whose education, experience and technical ability provided the basis on which the firm or other business entity was selected must meet the qualifications.
- 6) When a State agency requires services that meet the requirements of this subsection (b), the competitive selection procedures described in this Section must be followed. Services that do not meet the requirements of this Section must be procured in accordance with other methods of source selection authorized by the Code and this Part.
- c) The categories of services enumerated below shall be considered and procured as professional and artistic services. With regard to other services, the SPO may determine whether the factors identified in subsection (b), when applied to particular services to be procured, require such services to be procured as professional and artistic under these competitive selection procedures, or as services that are subject to one of the other methods of source selection authorized by the Code and this Part. The following categories are examples of disciplines that would always be professional and artistic services:
  - 1) law;
  - 2) accounting;
  - 3) medicine;
  - 4) dentistry; and
  - 5) clinical psychology.
- d) Architect, engineering and land surveying services shall be procured pursuant to the procedures of the Architectural, Engineering, and Land Surveying Qualifications Based Selection Act [30 ILCS 535]. Such procurements are not subject to the procedures for other professional services established in the Code or this Part.
- e) Conditions for Use of Competitive Selection Procedures  
Except as authorized under Section 20-25 (Sole Source Procurement) or Section 20-30 (Emergency Procurements) of the Code, these competitive selection procedures shall be used for all procurements of professional and artistic services of \$20,000 or more. Services less than \$20,000 and for a nonrenewable term of one year or less may be procured in accordance with Section 1.2020 (Small Purchases) of this Part.
- f) Prequalification  
The CPO shall maintain a list of prequalified professional and artistic vendors in accordance with Section 1.2045 of this Part. Persons may amend statements of qualifications at any time by filing a new statement. Failure of a professional and artistic vendor to prequalify shall not be cause for rejection of a proposal provided that the responsive offeror supplies with its proposal all information defined by the prequalification process.
- g) Public Notice of Competitive Selection Procedures  
1) Notice of the need for professional and artistic services shall be made by the Procurement Officer in the form of a Request for

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## Proposals.

- 2) Notice shall be given as provided in Section 1.2010 (Competitive Sealed Bidding) of this Part.
- 3) Notice shall also be distributed to prequalified persons interested in performing the services required by the proposed contract.

## h) Request for Proposals

- 1) Contents. The Request for Proposals shall be in the form specified by the CPO and shall contain at least the following information:

- A) the type of services required;
- B) a description of the work involved;
- C) an estimate of when and for how long the services will be required;
- D) the type of contract to be used;
- E) a date by which proposals for the performance of the services shall be submitted;
- F) a statement of the minimum information that the proposal shall contain, which may, by way of example, include:
  - i) the name of the offeror, the location of the offeror's principal place of business and, if different, the place of performance of the proposed contract;
  - ii) if deemed relevant by the Procurement Officer, the age of the offeror's business and average number of employees over a previous period of time, as specified in the Request for Proposals;
  - iii) the abilities, qualifications, and experience of all persons who would be assigned to provide the required services;
  - iv) a listing of other contracts under which services similar in scope, size, or discipline to the required services were performed or undertaken within a previous period of time, as specified in the Request for Proposals;
  - v) a plan, giving as much detail as is practical, explaining how the services will be performed;
- G) price (to be submitted in a separate envelope in the proposal package and not mentioned elsewhere in the proposal package); and
- H) the factors to be used in the evaluation and selection process and their relative importance.

- 2) Evaluation. Proposals shall be evaluated only on the basis of evaluation factors stated in the Request for Proposals. Price will not be evaluated until ranking of all proposals and identification of the most qualified vendor. The relative importance of the evaluation factors will vary according to the type of services being procured. The minimum factors are:
  - A) the plan for performing the required services;

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- B) ability to perform the services as reflected by technical training and education, general experience, specific experience in providing the required services, and the qualifications and abilities of personnel proposed to be assigned to perform the services;
- C) the personnel, equipment, and facilities to perform the services currently available or demonstrated to be made available at the time of contracting; and
- D) a record of past performance of similar work.

## i) Pre-Proposal Conference

A pre-proposal conference, if appropriate, shall be conducted in accordance with Section 1.2010(f) (Pre-Bid Conference). Such a conference may be held anytime prior to the date established for submission of proposals.

## j) Delivery, Receipt and Handling of Proposals

- 1) Proposals shall be submitted to and opened by the CPO in accordance with instructions given by the CPO to the SPO.

## 2) Public Opening

- A) Proposals and modifications shall be opened publicly at the time, date and place designated in the Request for Proposals.

- B) Opening shall be witnessed by a State employee or by any other person present, but the person opening proposals shall not serve as witness. A record shall be prepared that shall include the name of each offeror, the number of modifications received, if any, and a description sufficient to identify the supply or service item offered. The record of proposals shall be open to public inspection after award of the contract.

- C) Proposals and modifications shall be opened in a manner designed to avoid disclosing contents to competitors. Only State personnel and contractual agents may review the proposals prior to award.

- D) Proposals of offerors who are not awarded the contract shall not be open to public inspection.

- 3) Transmission to SPO. The CPO will forward timely proposals to the SPO of the using agency along with any pertinent information contained in the files of the CPO regarding the vendors who submitted proposals.

- 4) The CPO may require that the SPO be present at and assist in the opening and registration of proposals and the transportation of proposals to the SPO.

## k) Discussions

- 1) Discussions Permissible. The Procurement Officer may conduct discussions with any offeror to:

- A) determine in greater detail such offeror's qualifications; and

- B) explore with the offeror the scope and nature of the

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required services, the offeror's proposed method of performance, and the relative utility of alternative methods of approach. The Procurement Officer may allow changes to the proposal based on those discussions.

- 2) No Disclosure of Information. Discussions shall not disclose any information derived from proposals submitted by other offerors, and the agency conducting the procurement shall not disclose any information contained in any proposals until after award of the proposed contract has been made. The proposal of the offeror awarded the contract shall be open to public inspection except as otherwise provided in the contract.

- 1) Selection of the Best Qualified Offerors

After conclusion of validation of qualifications, evaluation, and discussion, the Procurement Officer shall rank the acceptable offerors in the order of their respective qualifications.

- m) Evaluation of Pricing Data

Pricing submitted for all proposals timely submitted shall be opened and ranked.

- 1) If the low price is submitted by the most qualified vendor, the Procurement Officer may award to that vendor.
- 2) If the price of the most qualified vendor is not low and if it does not exceed \$25,000, the Procurement Officer, but not a designee, may award to that vendor.
- 3) If the price of the best qualified vendor exceeds \$25,000, the Procurement Officer, but not a designee, must state why a vendor other than the low priced vendor was selected and that determination shall be published in the Bulletin.

- n) Negotiation and Award of Contract

- 1) General. The Procurement Officer shall attempt to negotiate a contract with the best qualified offeror for the required services at fair and reasonable compensation. The Procurement Officer may, in the interest of efficiency, negotiate with other vendors, while negotiating with the best qualified vendor.

- 2) Elements of Negotiation. At a minimum, contract negotiations shall be directed toward:

- A) making certain that the offeror has a clear understanding of the scope of the work, specifically, the essential requirements involved in providing the required services;
- B) determining that the offeror will make available the necessary personnel and facilities to perform the services within the required time; and
- C) agreeing upon compensation that is fair and reasonable, taking into account the estimated value of the required services and the scope, complexity, and nature of such services.

- 3) Successful Negotiation of Contract with Best Qualified Offeror

- A) If compensation, contract requirements, and contract documents can be agreed upon with the best qualified

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offeror, the contract shall be awarded to that offeror, unless the procurement is canceled.

- B) Compensation must be determined in writing to be fair and reasonable. Fair and reasonable compensation shall be determined by the Procurement Officer based on the circumstances of the particular procurement, including but not limited to the nature of the services needed, qualifications of the offerors, consideration of range of prices received in the course of the procurement, and the agency's identified budget.

- 4) Failure to Negotiate Contract with Best Qualified Offeror

- A) If compensation, contract requirements, or contract documents cannot be agreed upon with the best qualified offeror, a written record stating the reasons therefore shall be placed in the file. The Procurement Officer shall advise such offeror of the termination of negotiations.

- B) Upon failure to negotiate a contract with the best qualified offeror, the Procurement Officer may enter into negotiations with the next most qualified offeror.

- C) Nothing in this Section shall prohibit the Procurement Officer from making a selection that represents the best value, qualifications, price and other relevant factors established in the request for proposals being considered. The Procurement Officer may, in considering best value, determine the proposal from a fully qualified vendor that submitted the lowest price to be the best value without further evaluation.

- o) Multiple Awards

The Procurement Officer may enter into negotiations with the next most qualified vendor or vendors when the purchasing agency has a need that requires multiple vendors under contract.

- p) The Procurement Officer procuring professional and artistic services, including those under an exception described in subsection (e), shall provide to the CPO the information necessary for publication in the Bulletin.

- q) Notice of Award

Written notice of award shall be public information and made a part of the contract file. The CPO shall publish the names of the responsible decision makers of the purchasing agency, the name of the agency, the successful vendor, a contract reference number or other identifier, and the value of the contract. Publication shall be in the next available issue of the Bulletin.

- r) Small, sole source and emergency procurements of professional and artistic services under the jurisdiction of an SPO do not require approval of the CPO to proceed. Any notices shall be published by the SPO.

- s) Post Performance Review

The SPO of the using agency shall provide a synopsis of the contract



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and shall rate the vendor's performance using the form developed by the CPO. A copy of the completed form shall be provided to the CPO.

## Section 1.2036 Other Methods of Source Selection

## a) Split Award

1) An award of a definite quantity requirement may be split between bidders or offerors. Each portion shall be for a definite quantity and the sum of the portions shall be the total definite quantity required. A split award may be used only when award to more than one bidder or offeror for different amounts of the same item are necessary to obtain the total quantity or the required delivery.

2) The Procurement Officer shall make a written determination setting forth the reasons for the split award, which determination shall be made a part of the procurement file.

## b) Multiple Award

1) A multiple award is an award of an indefinite quantity contract to more than one bidder or offeror when the State is obligated to order all of its actual requirements from those vendors.

2) A multiple award may be made when award to two or more bidders or offerors for similar products is necessary for adequate delivery, service, or product compatibility. Any multiple award shall be made in accordance with the provisions of Section 1.2010 (Competitive Sealed Bidding), Section 1.2015 (Competitive Sealed Proposals), Section 1.2020 (Small Purchases), and Section 1.2030 (Emergency Procurements), as applicable. Awards shall not be made for the purpose of simply dividing the business or to select products or suppliers to allow for user preference unrelated to utility or economy. Any such awards shall be limited to the least number of suppliers necessary to meet the valid requirements of State agencies.

3) The State shall reserve the right to take bids separately if a particular quantity requirement arises that exceeds its normal requirement or an amount specified in the contract.

4) If a multiple award is anticipated, the solicitation shall state this fact as well as the criteria for award.

5) In a multiple award situation, one vendor may be designated as the primary recipient of orders. The other awardees may receive orders in the event the primary vendor is unable to deliver or for other reasons as determined by the Procurement Officer.

## c) Term and Condition Contracts

1) A term and condition contract contains agreed contractual terms and conditions established for the convenience of the parties to be used in conjunction with a subsequent procurement and processed in accordance with the requirements of the Code and this Part. A term and condition contract is not a procurement. It creates no obligation on the part of the State to procure from

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the vendor nor does it create an authorization for a State agency to order based on that term and condition contract, except as provided in subsection (c)(2).

2) Orders may be placed against term and condition contracts without use of any prescribed method of source selection for convenience of processing sole source, emergency or small procurements. Agencies with reasonably defined repetitive small needs that, over the course of a fiscal year, are likely to exceed the small purchase amount set in Section 20-20 of the Code and this Part should consider a competitive method of source selection to contract for those repetitive needs.

## d) Auction

Purchases may be made at auction in accordance with the procedural requirements applicable to the particular auction. Notice and competition is not required and the amount payable shall be the amount bid and accepted plus any required buyer's premium.

## e) Non-governmental Joint Purchase

1) The CPO may enter into (or authorize one or more SPOs to enter into) an agreement with a person not eligible for the Governmental Joint Purchasing Act for the joint procurement of anything covered by the Code. Any method of source selection may be used and may be modified or adapted to meet the needs of the non-State entity.

2) The primary use of this provision shall be to accommodate mutual relationships between the State and not-for-profit groups whose purpose is to conduct programs adjunct to those of the State agency that is party to the contract.

## f) Federal Requirements

The Procurement Officer for any State agency receiving federal aid funds, grants or loans or otherwise subject to federal entity requirements may conduct procurements in accordance with federal requirements that are necessary to receive or maintain those federal aid funds, grants or loans or to remain in compliance with federal requirements.

## g) Foreign Country Procurement

Procurements to meet the needs of State agency offices located in foreign countries shall comply with the Code and this Part whenever practicable. The SPO shall maintain a record of such action.

## h) Donations

1) When a procurement will have the majority of funding from a donation, the terms of which donation require use of particular procurement or contracting procedures, the Procurement Officer may follow those procedures, but shall follow the Code and this Part whenever practicable.

2) Donations may be acknowledged by the donee agency in a manner appropriate to the type of donation and the program activity associated with the donation. Acknowledgment may include, but need not be limited to, public announcement at the event or in

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donee agency publications, and inviting the donor to attend the program activity associated with the donation.

## Section 1.2037 Tie Bids and Proposals

a) Tie bids or proposals are those from responsive and responsible vendors that are identical in price or evaluation and represent the low price.

b) Tie bids or proposals will be treated as follows:

1) If the tied vendors include an Illinois resident vendor, the Illinois resident vendor shall be given the award. In all other situations, including if two or more Illinois resident bidders are tied, the decision shall be made in accordance with this subsection (b). "Illinois resident vendor" has the meaning given in Section 1.4510 (Resident Bidder Preference) of this Part.

2) If there is a significant difference in responsibility (including ability to provide the service or deliver in the quantity and at the time required), the award will be made to the vendor who is deemed to be the most responsible. A vendor who has had experience in contracting with the State shall be given additional consideration in determining responsibility if the Procurement Officer determines that dealing with a vendor that has knowledge of State requirements, contracts, job sites, payment practices and such other factors and with which there has been favorable past experience increases the likelihood of successful performance.

3) If there is no significant difference in responsibility, but there is a difference in the quality of the supplies or services offered, the vendor offering the best quality will be accepted.

4) If there is no significant difference in responsibility and no difference in quality of the supplies or services offered, the vendor offering the earliest delivery time will be accepted in any case in which the solicitation specified that the needs of the agency require delivery as early as possible.

5) If the bids or proposals are equal in every respect, the award shall be made by lot unless the Procurement Officer determines that splitting the award among two or more of the tied bidders is in the best interest of the State. Awards may be split if all affected bidders agree, if splitting is feasible given the type of supplies or services requested, if overall pricing would not increase, if delivery would be better ensured, or if necessary or desirable to promote future competition.

c) Record

Each SPO shall provide a report to the CPO on a quarterly basis of all procurements on which tie bids or proposals were received. The report shall provide at least the following information:

- 1) the identification number of the solicitation;
- 2) a description of what was procured; and

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- 3) a listing of all the bidders and the prices submitted.

## Section 1.2038 Mistakes

a) General

Corrections to bids, proposals or other procurement processes are allowed, but only to the extent not contrary to the best interest of the State or the fair treatment of other bidders.

b) Mistakes Discovered Before Opening

A vendor may correct mistakes discovered before the time and date set for opening by withdrawing or correcting as provided in this Section.

c) Confirmation of Mistake

When the Procurement Officer knows or has reason to conclude that a mistake has been made, such officer shall request the vendor to confirm the information. Situations in which confirmation should be requested include obvious or apparent errors on the face of the document or a price unreasonably lower than the others submitted. If the vendor alleges a mistake, the bid or proposal may be corrected or withdrawn if the conditions set forth in this Section, as applicable, are met.

d) Mistakes in Bids Discovered After Opening but Before Award

This subsection (d) sets forth procedures to be applied in situations in which mistakes in bids are discovered after the time and date set for bid opening but before award.

1) Minor informalities. A minor informality or irregularity is one that is a matter of form or pertains to some immaterial or inconsequential defect or variation of a bid from the exact requirement of the Invitation for Bids, the correction or waiver of which would not be prejudicial to the State (i.e., the effect on price, quality, quantity, delivery, or contractual conditions is negligible). The Procurement Officer shall waive such informalities or allow the bidder to correct them depending on which is in the best interest of the State. Examples of minor informalities as to form include the failure of a bidder to:

A) return the number of signed bids required by the Invitation for Bids;

B) acknowledge receipt of an amendment to the Invitation for Bids, but only if:

- i) it is clear from the bid that the bidder received the amendment and intended to be bound by its terms; or
- ii) the amendment involved had a negligible effect on price, quantity, quality, or delivery.

2) Mistakes Where Intended Correct Bid Is Evident. If the mistake and the intended correct bid are clearly evident on the face of the bid document, the bid shall be corrected to the intended correct bid and may not be withdrawn. Examples of mistakes that may be clearly evident on the face of the bid document are typographical errors, errors in extending unit prices,

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transposition errors, and arithmetical errors.

- 3) Mistakes Where Intended Correct Bid Is Not Evident. A bidder may be permitted to withdraw a low bid if:

- A) a mistake is clearly evident on the face of the bid document but the intended correct bid is not similarly evident; or
- B) the bidder submits proof of evidentiary value that clearly and convincingly demonstrates that a mistake was made.

- e) Mistakes in Proposals Discovered After Receipt, but Before Award. This subsection (e) sets forth procedures to be applied in four situations in which mistakes in proposals are discovered after receipt of proposals but before award.

- 1) During Discussions; Prior to Best and Final Offers. Once discussions are commenced with any offeror or after best and final offers are requested, any offeror may freely correct any mistake prior to the date set for conclusion of discussions or for receipt of best and final offers.
- 2) Minor Informalities. Minor informalities, unless otherwise corrected by an offeror as provided in this Section, shall be treated as they are under subsection (d).
- 3) Correction of Mistakes. If discussions are not held or if the best and final offers upon which award will be made have been received, mistakes may be corrected and the intended correct offer considered only if:

- A) the mistake and the intended correct offer are clearly evident on the face of the proposal, in which event the proposal may not be withdrawn; or
- B) the mistake is not clearly evident on the face of the proposal, but the offeror submits adequate proof that clearly and convincingly demonstrates both the existence of a mistake and the intended correct offer, and such correction would not be contrary to the fair and equal treatment of other offerors.

- 4) Withdrawal of Proposals. If discussions are not held, or if the best and final offers upon which award will be made have been received, the offeror may be permitted to withdraw the proposal if:

- A) the mistake is clearly evident on the face of the proposal and the intended correct offer is not;
- B) the offeror submits proof of evidentiary value that clearly and convincingly demonstrates that a mistake was made but does not demonstrate the intended correct offer; or
- C) the offeror submits adequate proof that clearly and convincingly demonstrates the intended correct offer, but to allow corrections would be contrary to the fair and equal treatment of other offerors.

- f) Mistakes Discovered After Award

Mistakes shall not be corrected after award of the contract except where the Procurement Officer finds it would be unconscionable (e.g.,

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if the mistake resulted in a windfall to the State) not to allow the mistake to be corrected.

- g)

Determinations Required  
When a proposal is corrected or withdrawn, or correction or withdrawal is denied, a written determination shall be prepared showing that relief was granted or denied in accordance with this Part. The Procurement Officer shall prepare the determination.

## Section 1.2040 Cancellation of Solicitations; Rejection of Bids or Proposals

- a) Scope of this Section

The provisions of this Section shall govern the cancellation of any solicitations whether issued by the State under competitive sealed bidding, competitive sealed proposals, small purchases, or any other source selection method, and rejection of bids or proposals in whole or in part.

- b) Policy

Any solicitation may be canceled when the Procurement Officer believes cancellation to be in the State's best interest. Nothing shall compel the award of a contract.

- c) Cancellation of Solicitation; Rejection of All Bids or Proposals Prior to Opening

1) As used in this Section, "opening" means the date set for opening of bids, receipt of unpriced technical offers in multi-step sealed bidding, or receipt of proposals in competitive sealed proposals.

- 2) Prior to opening, a solicitation may be canceled in whole or in part when the Procurement Officer determines in writing that such action is in the State's best interest for reasons including, but not limited to:

- A) the State no longer requires the supplies or services;
  - B) the State no longer can reasonably expect to fund the procurement; or
  - C) proposed amendments to the solicitation would be of such magnitude that a new solicitation is desirable.
- 3) When a solicitation is canceled prior to opening, notice of cancellation shall be sent to all businesses that responded to the solicitation.

- 4) The notice of cancellation shall:

- A) identify the solicitation;
- B) briefly explain the reason for cancellation; and
- C) where appropriate, explain that an opportunity will be given to compete on any resolicitation or any future procurements of similar supplies or services.

- d) Cancellation of Solicitation; Rejection of All Bids or Proposals After Opening

- 1) After opening but prior to award, all bids or proposals may be rejected in whole or in part when the Procurement Officer



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determines in writing that such action is in the State's best interest. Such reasons may include, but are not limited to:

- A) the supplies or services being procured are no longer required;
  - B) ambiguous or otherwise inadequate specifications were part of the solicitation;
  - C) the solicitation did not provide for consideration of all factors of significance to the State;
  - D) prices exceed available funds and it would not be appropriate to adjust quantities to come within available funds;
  - E) all otherwise acceptable bids or proposals received are at clearly unreasonable prices; or
  - F) there is reason to question whether the bids or proposals may not have been independently arrived at in open competition, may have been collusive, or may have been submitted in bad faith.
- 2) When the solicitation is canceled or when all bids or proposals are rejected, all vendors who submitted bids or proposals shall be sent a notice upon request informing them of the reasons for the cancellation or rejection.

## e) Documentation

The reasons for cancellation or rejection shall be made a part of the procurement file and shall be available for public inspection.

## f) Rejection of Individual Bids or Proposals

- 1) General. This subsection (f) applies to rejections of individual bids or proposals in whole or in part.
- 2) Notice in Solicitation. Each solicitation shall provide that any bid or proposal may be rejected in whole or in part when in the best interest of the State as provided in this Section.

## 3) Reasons for Rejection

Reasons for rejecting a bid or proposal may include, but are not limited to:

- A) the business that submitted the bid or proposal is nonresponsible as determined under Section 1.2046 (Responsibility) of this Part;
- B) the bid or proposal is not responsive, that is, it does not conform in all material respects to the solicitation;
- C) the proposal ultimately (that is, after any opportunity has passed for altering or clarifying the proposal) fails to meet the announced requirements of the State in some material respect;
- D) the supply or service item offered in the bid is unacceptable by reason of its failure to meet the requirements of the specifications or permissible alternates or other acceptability criteria set forth in the Invitation for Bids; or
- E) the proposed price is clearly unreasonable.

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- 4) Notice of Rejection. Upon request, unsuccessful bidders or offerors shall be advised of the reasons for rejection.

## SUBPART F: SUPPLIERS, PREQUALIFICATION AND RESPONSIBILITY

## Section 1.2043 Suppliers

- a) An agency with procurement authority may contract with any qualified source of supply, but must procure from the Directed Sources except as permitted by those sources, and must consider the following Special Sources.

## b) Directed Sources -- State-Produced Supplies or Services

1) Correctional Industries. The CPO, after consulting with the Department of Corrections, shall determine the type and extent of the preference purchasing agencies shall give to supplies produced or services performed by Correctional Industries. Factors to be considered in determining the preference include, but are not limited to, the ability of Correctional Industries to meet the State's requirements, the price charged and the reason for the Correctional Industries program. This information shall be provided to each SPO.

- 2) Central Services. Supplies and services available from the program operations of the Department of Central Management Services shall be utilized unless the CPO authorizes procurement from other sources.

## c) Special Sources

- 1) Prior to any equipment procurement, each agency should consider property available from the State and Federal Surplus Warehouses, which are under the jurisdiction of the Department of Central Management Services. The State Property Control Act [30 ILCS 605/7a] requires that surplus furniture be considered before any purchase of new furniture valued at \$500 or more per piece.
- 2) Various supplies and services are available from qualified workshops for the disabled and procurement from these workshops is encouraged. Notice and competition is not required pursuant to Section 45-35 of the Code. Information regarding the workshops is available from the Department.
- 3) Various supplies and services are available from State agencies and other governmental units. These may be procured without notice and competition.

## Section 1.2044 Vendor List/Required Use

- a) The CPO shall maintain a list of vendors interested in doing business with the State. The names and addresses of vendors on the list shall be available for public inspection.
- b) Inclusion on, or exclusion from, the list shall not be a factor in determining whether a vendor is a responsible vendor.

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c) When vendors are directly solicited by the State, Invitations for Bids and other solicitations will be sent to vendors on the vendor list for supplies or services in question, except in the following cases:

- 1) The vendor does not sell the particular commodity or equipment.
- 2) The number of vendors for a procurement classification is of such magnitude that optimum prices may reasonably be expected without soliciting the entire vendor list. The Procurement Officer may, if he/she determines that the best interest of the State would be served, rotate the selection from the list on any equitable basis.
- 3) The Procurement Officer determines that the best interests of the State will be served by limiting vendors to those in defined geographic areas (example: purchases of ready-mix concrete, perishables, and equipment requiring immediate service).

## Section 1.2045 Prequalification

## a) General

- 1) The CPO shall identify by publication in the Bulletin the categories of supplies and services (including professional and artistic services) for which the CPO may prequalify vendors of those supplies and services. The CPO is not required to prequalify vendors but may do so when determination of a vendor's qualifications prior to procurement would be advantageous to the State.
- 2) An opportunity to prequalify shall be allowed at least one time each fiscal year. The opportunity to prequalify shall be announced in the Bulletin. The notice shall alert vendors that failure to participate in the prequalification process may result in the vendor being ineligible to receive contracts.
- 3) When prequalifying a vendor, the CPO may limit prequalifications to determining whether a vendor has been and is likely to be "responsible" using the criteria set forth in Section 1.2046 of this Part. The fact that a prospective vendor has been prequalified does not necessarily represent a finding of responsibility for a particular procurement.
- 4) When prequalifying a vendor, the CPO may consider factors tailored to a specific procurement or type of procurement, which shall be announced in the Bulletin.
- 5) Except in the case of professional and artistic services, distribution of and responses to the solicitation may be limited to prequalified vendors and award of a contract may be denied because a vendor was not prequalified. If eligibility for the procurement will be limited to prequalified vendors, the Invitation for Bids, Request for Proposals or other procurement request shall state that fact.
- b) Professional and Artistic Services
  - 1) Any prequalification of vendors of professional and artistic

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services shall include, at a minimum, a specified level of:

- A) education;
  - B) experience; and
  - C) technical ability;
- and may require certification or licensure, or membership in professional associations.
- 2) Categories for prequalification will include, but are not limited to, those listed in Section 1.2035 of this Part.
  - c) Qualified Products Lists  
Qualified products lists are treated in Section 1.2050 (Specifications and Samples) of this Part.

## Section 1.2046 Responsibility

## a) Application

Contracts are to be made only with responsible vendors unless no responsible vendor is available to meet the State's needs. If there is doubt about responsibility, and if a bond or other security would adequately protect the State's interests, then that vendor may be awarded a contract upon receipt of the bond or other security.

## b) Standards of Responsibility

- 1) Standards. Factors to be considered in determining whether the standard of responsibility has been met may include, but are not limited to, whether a prospective vendor:
  - A) has available the appropriate financial, material, equipment, facility, and personnel resources and expertise (or the ability to obtain them) necessary to indicate its capability to meet all contractual requirements (the Procurement Officer may designate a level of financial resource below which the vendor will be deemed "not responsible");
  - B) is able to comply with required or proposed delivery or performance schedules, taking into consideration all existing commercial and governmental commitments;
  - C) has a satisfactory record of performance. Vendors who are or have been deficient in current or recent contract performance in dealing with the State or other customers may be deemed "not responsible" unless the deficiency is shown to have been beyond the reasonable control of the vendor;
  - D) has a satisfactory record of integrity and business ethics. Vendors who are under investigation or indictment for criminal or civil actions that bear on the particular procurement or that create a reasonable inference or appearance of a lack of integrity on the part of the vendor may be declared not responsible for the particular procurement;
  - E) is qualified legally to contract with the State;
  - F) has supplied all necessary information in connection with

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the inquiry concerning responsibility;

- G) has a current Public Contracts number from the Illinois Department of Human Rights, pursuant to 44 Ill. Adm. Code 750.210, if required. Proof of application prior to opening of bids or proposals will be sufficient for an initial determination;

H) pays prevailing wages, if required by law; and

I) is current in payment of all State of Illinois taxes, including the unemployment insurance tax.

- 2) Information Pertaining to Responsibility. The prospective vendor shall supply information requested by the Procurement Officer concerning the responsibility of such vendor. The State may supplement this information from other sources and may require additional documentation at any time. If such vendor fails to supply the requested information, the Procurement Officer shall base the determination of responsibility upon any available information, or may find the prospective vendor nonresponsible.

c) Ability to Meet Standards

The prospective vendor may demonstrate the availability of necessary financing, equipment, facilities, expertise, and personnel by submitting upon request:

- 1) evidence that such vendor possesses such necessary items;
- 2) acceptable plans to subcontract for such necessary items; or
- 3) a documented commitment from, or explicit arrangement with, a satisfactory source to provide the necessary items.

d) Duty Concerning Responsibility

Before awarding a contract, the Procurement Officer must be satisfied that the prospective vendor is responsible. Responsibility can be proven until time of contract execution unless the solicitation or other law requires that the vendor submit information necessary to determine responsibility by a stated date or time.

e) Written Determination of Nonresponsibility Required

If a vendor who otherwise would have been awarded a contract is found nonresponsible, a written determination of nonresponsibility setting forth the basis of the finding shall be prepared by the CPO or the SPO. The final determination shall be made part of the procurement file.

f) Bond for Responsibility

Vendors not having a history of performance may be considered responsible if no other disqualifying factors exist. A bond or other security may be required of such vendors.

g) Affiliated Companies

Vendors who are newly formed business concerns having substantially the same owners, officers, directors, or beneficiaries as a previously existing vendor that has been determined not responsible will also be determined not to be responsible unless the new organization can prove it was not set up for the purpose of avoiding an earlier determination of nonresponsibility.

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## SUBPART C: BID, PROPOSAL AND PERFORMANCE SECURITY

## Section 1.2047 Security Requirements

a) A Procurement Officer may require that a vendor furnish bid, proposal, or performance security on State contracts. Whenever security is required, except as provided herein, the procurement document will clearly indicate the type and amount of security.

b) Security, unless otherwise specified, may be in the form of cashier's check, certified check, money order, irrevocable letter of credit or bond. Any bond must be issued by a surety company authorized to do business in the State of Illinois.

c) Unless the amount is set by law, the Procurement Officer will determine the amount, in dollars or percentage of contract price, that will adequately protect the State's interests. That amount will vary depending on the type of procurement and the risks and potential losses associated with delay or failure to complete the project, and for other such reasons.

d) A vendor may be required to furnish up to 100% performance security at any time during contract performance and at its cost, if it appears that delivery or production schedules cannot be met, quality is poor, responsibility is questioned and for similar reasons.

e) Permissive/Mandatory Security

1) Bid or proposal security is permissive on any contract but is not appropriate on emergency or sole source procurements.

2) Performance security is permissive on any contract and is recommended on contracts calling for advance payment.

3) Performance security is required on all public works contracts. A vendor may submit a single or continuous security each year that will be applicable on all contracts of the purchasing agency. When such security has been obligated in an amount equal to the sum of accumulated security requirements, additional security must be submitted.

g) Bid or proposal security will be returned to unsuccessful vendors as soon after award as possible. The bid or proposal security of the successful vendor will be returned after contracts have been signed and performance security, if any, submitted. Performance security will be returned upon full performance.

## SUBPART H: SPECIFICATIONS AND SAMPLES

## Section 1.2050 Specifications and Samples

a) Responsibilities Regarding Specifications

- 1) The Procurement Officer shall write the necessary specifications except as noted in this subsection (a).
- 2) If a specification for general or common use or a qualified products list exists for an item to be procured under Section



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20-20 of the Code (Small Purchases), it shall be used except as otherwise authorized by the CPO. If no such specification exists, SPOs shall have the authority to prepare specifications for use in such purchases. In an emergency under Section 20-30 of the Code, any necessary specification may be utilized without regard to the provisions of this Subpart.

b) Procedures for the Development of Specifications

- 1) If the CPO develops a specification for a common or general use item or has developed a qualified products list in accordance with this Section for a particular supply or service, it shall be used unless the CPO authorizes use of another specification.
  - 2) All procurements shall be based on specifications that accurately reflect the State's needs. Specifications shall clearly and precisely describe the salient technical or performance requirements.
  - 3) Specifications shall not include restrictions that do not significantly affect the technical requirements or performance requirements, or other legitimate State needs. All specifications shall be written in such a manner as to describe the requirements to be met, without having the effect of exclusively requiring a proprietary supply or service, or procurement from a sole source, unless no other manner of description will suffice.
  - 4) Any specifications or standards adopted by business, industry, not-for-profit organization or governmental unit may be adopted by reference.
  - 5) A specification may provide alternate descriptions where two or more design, functional, or performance criteria will satisfactorily meet the State's requirements.
- c) Brand Name or Equal Specification
- 1) Brand name or equal specifications may be used when the Procurement Officer determines in writing that:
    - A) no specification for a common or general use specification or qualified products list is available;
    - B) time does not permit the preparation of another form of specification, not including a brand name specification;
    - C) the nature of the product or the nature of the State's requirement makes use of a brand name or equal specification suitable for the procurement; or
    - D) use of a brand name or equal specification is in the State's best interest.
  - 2) Brand name or equal specifications shall seek to designate more than one brand as "or equal", and shall further state that substantially equivalent products to those designated will be considered for award.
  - 3) Unless the Procurement Officer determines that the essential characteristics of the brand names included in the specifications are commonly known in the industry or trade, brand name or equal

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Specifications shall include a description of the particular design, functional, or performance characteristics that are required.

- 4) Where a brand name or equal specification is used in a solicitation, the solicitation shall contain explanatory language that the use of a brand name is for the purpose of describing the standard of quality, performance, and characteristics desired and is not intended to limit or restrict competition. "Or equal" submissions will not be rejected because of minor differences in design, construction or features that do not affect the suitability of the product for its intended use. Burden of proof that the product is equal is on the bidder.

d) Brand Name Only Specification

- 1) Determination. A brand name only specification may be used only when the Procurement Officer makes a written determination that only the identified brand name item or items will satisfy the State's needs.
  - 2) Use. Brand name alone may be specified in order to fill medical prescription needs, to stock State retail-type operations, to ensure compatibility in existing systems, to preserve warranty, to ensure maintenance, or as authorized in writing by the CPO. An agency may, pursuant to an authorized competitive procedure, select a particular vendor to provide supplies or services for a specified period of time, and for that period the supplier of additional, related and updated supplies and services may be limited to the selected vendor or the brand initially selected.
  - 3) Competition. The Procurement Officer shall seek to identify sources from which the designated brand name item or items can be obtained and shall solicit such sources to achieve whatever degree of competition is practicable. If only one source can supply the requirement, the procurement shall be made under Section 1.2025 (Sole Source Procurement) of this Part.
  - 4) Small and Emergency procurements. Brand name only specifications may be used when procuring items under the small (Section 1.2020 of this Part) and emergency (Section 1.2025 of this Part) provisions of this Part.
- e) Qualified Products List
- 1) Use. A qualified products list may be developed by the Procurement Officer when testing or examination of the supplies prior to issuance of the solicitation is desirable or necessary in order to best satisfy State requirements.
  - 2) Solicitation. When developing a qualified products list, a representative group of potential suppliers shall be solicited in writing to submit products for testing and examination to determine acceptability for inclusion in a qualified products list. Any potential supplier, even though not solicited, may offer its products for consideration during the time allowed for testing and examination.

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- 3) Testing and Confidential Data. Inclusion on a qualified products list shall be based on results of tests or examinations conducted in accordance with established requirements. Except as otherwise provided by law, trade secrets, test data, and similar information provided by the supplier will be kept confidential when requested in writing by the supplier.

## f) Proven Products

The supply or service may be rejected if it has not been offered to other governmental or commercial accounts for at least one year. Specifications may require that the supply or services must have been used in business or industry for a specified period of time to be considered.

## g) State Required Samples

- 1) Any required samples must be submitted as instructed in the solicitation with transportation prepaid by the vendor. Each sample must be labeled with the vendor's name, address and a means of matching the sample with the applicable bid or proposal.
- 2) Any sample submitted must be representative of the item that would be delivered if a contract were awarded for that item. Samples submitted by a successful vendor will be retained to check continuing quality. Submission of samples will not limit the State's right to require adherence to specifications.

- 3) No payment will be made for State Required Samples. Samples not destroyed or consumed by examination or testing will be returned upon request and at vendor's expense. Such request must be made at time of submission with return collect or prepayment provisions and instructions for return accompanying the samples.

## h) Product Demonstration

Any vendor may request time and space to demonstrate a product or service. Agreement to allow such demonstration will be solely at the State's discretion and will not entitle the bidder to a contract nor shall payment for the demonstration be allowed unless a written contract had been executed prior to the demonstration.

## i) Specifications Prepared by Other Than State Personnel

- 1) Specifications may be prepared by other than State personnel, including, but not limited to, consultants, architects, engineers, designers, and other drafters of specifications for public contracts when the Procurement Officer determines that there will be no substantial conflict of interest involved and it is otherwise in the best interest of the State, and provided the Procurement Officer retains the authority to finally approve the specifications. Contracts for the preparation of specifications by other than State personnel shall require the specification writer to adhere to State requirements.

- 2) The person who prepared the specifications shall not submit a bid or proposal to meet the procurement need unless the agency head, and not a designee, determines in writing that it would be in the best interest to accept such a bid or proposal from that person.

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A notice to that effect shall be provided to the CPO and, if approved by the CPO, published in the Bulletin.

## SUBPART I: CONTRACT TYPE

## Section 1.2055 Types of Contracts

## a) Scope

This Section contains descriptions of types of contracts and limitations as to when they should be utilized by the State in its procurements. Types of contracts not mentioned in this Section may also be utilized.

## b) Prohibition of Cost-Plus-a-Percentage-of-Cost Contracting

The cost-plus-a-percentage-of-cost contract is prohibited by Section 20-55 of the Illinois Procurement Code. This type of contracting may not be used alone or in conjunction with an authorized type of contract. A cost-plus-percentage-of-cost contract is one in which the vendor selects the supply or service on which the vendor's percentage is applied.

- 1) A percentage mark-up from an agreed price list is not a cost-plus-a-percentage-of-cost contract.

- 2) A percentage mark-up from the price of a supply or service selected by the State or another vendor under contract to the State is not a cost-plus-a-percentage-of-cost contract.

## c) Types of Fixed-Price Contracts

- 1) Firm Fixed-Price Contract. A firm fixed-priced contract provides a price that is not subject to adjustment because of variations in the vendor's cost of performing the work specified in the contract.

- 2) Fixed-Price Contract with Price Adjustment

- A) A fixed-price contract with price adjustment provides for variation in the contract price under special conditions defined in the contract, other than customary provisions authorizing price adjustments due to modifications to the work. The formula or other basis by which the adjustment in the vendor's price can be made shall be specified in the solicitation and the resulting contract. Adjustment allowed may be upward or downward only, or both upward and downward. Examples of conditions under which adjustments may be provided in fixed-price contracts are:

- i) changes in the vendor's labor agreement rates as applied to an industry or area (such as are frequently found in contracts for the purchase of coal);
- ii) changes due to rapid and substantial price fluctuations that can be related to an accepted index (such as contracts for gasoline, heating oils, and dental gold alloy); and
- iii) in requirement contracts, where a vendor is selected

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to provide all of the State's needs for the items specified in the contract, when a general price change applicable to all customers occurs, or when a general price change alters the base price (such as a change in a manufacturer's published price list or posted price to which a fixed discount is applied pursuant to the contract to determine the contract price).

- B) If the contract permits unilateral action by the vendor to bring about the condition under which a price increase may occur, the State shall have the right to reject the price increase and terminate without cost the future performance of the contract.

## d) Cost-Reimbursement Contracts

## 1) Determination Prior to Use

- A) A cost-reimbursement type contract may be used only when the Procurement Officer determines in writing that such a contract is likely to be less costly to the State than any other type or that it is impracticable to obtain the items.

- B) Reimbursement of travel expenses in accordance with applicable travel control board regulations is authorized without further determinations.

## 2) Cost Contract. A cost contract provides that the vendor will be reimbursed for allowable costs incurred in performing the contract, but will not receive a fee.

- 3) Cost-Plus-Fixed-Fee Contract. This is a cost-reimbursement type contract that provides for payment to the vendor of an agreed fixed fee in addition to reimbursement of allowable incurred costs. The fee is established at the time of contract award and does not vary if the actual cost of contract performance is greater or less than the initial estimated cost established for such work. Thus, the fee is fixed but not the contract amount because the final contract amount will depend on the allowable costs reimbursed. The fee is subject to adjustment only if the contract is modified to provide for an increase or decrease in the scope of work specified in the contract.

## 4) Cost Incentive Contracts

- A) General. A cost-incentive type of contract provides for the reimbursement to the vendor of allowable costs incurred up to the ceiling amount and establishes a formula whereby the vendor is rewarded for performing at less than target cost (that is, the parties' agreed best estimate of the cost of performing the contract will vary inversely with the actual, allowable costs of performance and consequently is dependent on how effectively the vendor controls cost in the performance of the contract).

- B) Fixed-Price Cost-Incentive Contract. In a fixed-price cost-incentive contract, the parties establish at the outset a target cost, a target profit (that is, the profit that

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will be paid if the actual cost of performance equals the target cost), a formula that provides a percentage increase or decrease of the target profit depending on whether the actual cost of performance is less than or exceeds the target cost, and a ceiling price. After performance of the contract, the actual cost of performance is arrived at based on the total incurred allowable costs as provided in the contract. The final contract price is then established in accordance with the formula using the actual cost of performance. The final contract price may not exceed the ceiling price. The vendor is obligated to complete performance of the contract, and, if actual costs exceed the ceiling price, the vendor suffers a loss.

- C) Cost-Reimbursement Contract with Cost-Incentive Fee. In a cost-reimbursement contract with cost-incentive fee, the parties establish at the outset a target cost; a target fee; a formula for increase or decrease of fee depending on whether actual cost of performance is less than or exceeds the target cost, with maximum and minimum fee limitations; and a cost ceiling that represents the maximum amount that the State is obligated to reimburse the vendor. The vendor continues performance until the work is complete or costs reach the ceiling specified in the contract, including any modification thereof, whichever first occurs. After performance is complete or costs reach the ceiling, the total incurred, allowable costs reimbursed as provided in the contract are applied to the formula to establish the incentive fee payable to the vendor.

## e) Performance Incentive Contracts

In a performance incentive contract, the parties establish at the outset a pricing basis for the contract, performance goals, and a formula that varies the profit or the fee if the specified performance goals are exceeded or not met. For example, early completion may entitle the vendor to a bonus, while late completion may entitle the State to a price decrease.

## f) Time and Materials Contracts; Labor Hour Contracts

Time and materials contracts provide an agreed basis for payment for materials supplied and labor performed. Labor hour contracts provide only for the payment of labor performed. Such contracts shall, to the extent possible, contain a stated ceiling or an estimate that shall not be exceeded without prior State approval.

## g) Definite Quantity and Indefinite Quantity Contracts

- 1) Definite Quantity. A definite quantity contract is a fixed-price contract that provides for delivery of a specified quantity of supplies or services either at specified times or when ordered.

- 2) Indefinite Quantity. An indefinite quantity contract is a contract for an indefinite amount of supplies or services to be furnished at specified times, or as ordered, that establishes



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unit prices of a fixed-price type. Generally an approximate quantity or the best information available as to quantity is stated in the solicitation. The contract may provide a minimum quantity the State is obligated to order and may also provide for a maximum quantity provision that limits the State's obligation to order.

- 3) Requirements Contracts. A requirements contract is an indefinite quantity contract for supplies or services that specifically obligates the State to order all the actual requirements of designated State agencies during a specified period of time.

## h) Leases

A lease is a contract for the use of supplies or real property under which title will not pass to the State at any time, except pursuant to an option to purchase.

## i) Recovery Contracts

Contracts may provide for payment to the vendor of a percentage of the amount the vendor recovers or collects on behalf of the State. The percentage may be fixed or may vary depending on amount of recovery or other factors, and the percentage may be paired with a fixed price or cost reimbursement method.

## j) Option Provisions

- 1) Contract Provision. When a contract is to contain an option for renewal, extension, or purchase, notice of such provision shall be included in the solicitation. These options may be exercised without taking other procurement action when the option is established for exercise at the State's option.

- 2) Lease with Purchase Option. A purchase option in a lease may be exercised only if the lease containing the purchase option was awarded under competitive sealed bidding or competitive sealed proposals, the leased supply or facility is the only supply or facility that can meet the State's requirements, the purchase option price is less than the small purchase limit or emergency conditions exist.

## k) State Produced Supplies and Services

Notwithstanding any provision in any contract, supplies or services available from the State's own programs, such as Correctional Industries, may be ordered without violating any contract.

## l) Extraordinary Quantities

Notwithstanding any provision in any contract, the State reserves the right to take bids separately if a particular quantity requirement arises that exceeds the State's normal needs or ordering requirements.

## m) Energy Conservation

The CPO may authorize an IFB, RFP or sole source negotiation for energy conservation measures whereby the State would make payment based on utility cost savings. Such contract shall require a clearly defined baseline of energy usage and method of measuring cost savings taking into account at least differing weather conditions, changes in facility, usage and cost of energy.

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## n) Sale of Advertising in State Publications

- 1) Pursuant to Section 20-110 of the Code, a Procurement Officer may sell ads or advertising space in certain State publications.
- 2) These arrangements shall be made pursuant to specifications included in an IFB or, if appropriate, an RFP.
- 3) The advertising in, or authorized use of, State publications shall be appropriate to the type of publication and the program operations of the agency.

- 4) This procedure is authorized in conjunction with, for example, publications that promote tourism, conservation, recycling and the State fairs. The executive head of the agency must concur in writing for the agency to accept advertising from a person the agency regulates.

- 5) Proceeds from the sale of the advertisements shall be paid as stated in the IFB or RFP, including, but not limited to, the following:
  - A) to the General Revenue Fund;
  - B) to a special fund authorized to receive the proceeds;
  - C) as free or additional copies; or
  - D) directly to the printer by the advertiser.

## SUBPART J: DURATION OF CONTRACTS

## Section 1.2060 Duration of Contracts - General

## a) General

- 1) A multi-term contract for a term up to 10 years is authorized when determined by the Procurement Officer to be in the best interest of the State.
- 2) The length of the payment term of bonds issued by or on behalf of a State agency shall be limited as provided in the statute authorizing the issuance of the bonds.
- 3) A software license may have a term longer than 10 years, including for a perpetual term, provided the payment term is limited to no more than 10 years.
- b) The contractual obligation of both parties in each fiscal period succeeding the first is subject to appropriation and availability of funds. The contract shall provide that, in the event that funds are not available for any succeeding fiscal period, the remainder of such contract shall be canceled without penalty to, or further payment being required by, the State. This provision applies to only those contracts that are funded in whole or in part by funds appropriated by the Illinois General Assembly or other governmental entity.
- c) Conditions for Use of Multi-Term Contracts
  - A multi-term contract may be used when:
    - 1) special production of definite quantities or the furnishing of long-term services is required to meet State needs; or
    - 2) a multi-term contract will serve the best interests of the State

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by encouraging effective competition or otherwise promoting economies in State procurement. The following factors are among those relevant to such a determination:

- A) firms that are not willing or able to compete because of high start-up costs or capital investment in facility expansion will be encouraged to participate in the competition when they are assured of recouping such costs during the period of contract performance;
  - B) lower production costs because of larger quantity of service requirements, and substantial continuity of production or performance over a longer period of time, can be expected to result in lower unit prices;
  - C) stabilization of the vendor's work force over a longer period of time may promote economy and consistent quality; or
  - D) the cost and burden of contract solicitation, award, and administration of the procurement may be reduced.
- d) Multi-Term Contract Procedure
- The solicitation shall state:
- 1) the proposed term;
  - 2) the amount of supplies or services required for the proposed contract period;
  - 3) the type of pricing requested (e.g., firm for term);
  - 4) how award will be determined.

## e) Renewals

- 1) When the original procurement specifically called for an initial term plus renewals, the renewals may be exercised without further procurement activity, provided the initial term and the exercised renewals may not exceed 10 years, the terms and conditions do not change except as provided in the contract (such as price escalations tied to an index) and the option is reserved solely to the State or is by mutual agreement. A renewal option that requires modification to a material term or condition of the contract shall be treated as a new contract and shall be subject to competitive procurement procedures established by the Code and this Part.
- 2) When the original procurement was silent as to renewals, the renewal must be procured using one of the methods of source selection authorized by the Code and this Part. This renewal shall start a new term not to exceed 10 years.
- 3) Where a renewal will result in the total term, counting the initial term and any previous renewals, to exceed 10 years, the renewal must be procured using one of the methods of source selection authorized by the Code and this Part. This renewal will start a new term that shall not exceed 10 years.

SUBPART K: CONTRACT MATTERS

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## Section 1.2560 Prevailing Wage

- a) For the following classifications and if competition exists, no bidder will be awarded a contract unless its employees are paid wages and benefits and are working under conditions prevalent in the location where the work is to be performed.

- 1) Public works
- 2) Printing
- 3) Janitorial services, window washing and security guard services having a monthly contract price of \$200 or a yearly price of \$2,000.

- b) Prevailing wage and conditions prevalent means the hourly wage rate, overtime, holiday pay, pension, welfare, premium differential, vacation pay and other benefits received by employees and the environmental conditions under which they work.

## c) Prevailing Wage Rates

- 1) Prevailing wage rates, benefits and conditions will be those in effect on the first date of the contract, provided that, if the rate changes during the contract term and the amount of change is known before execution of the contract, then the contract rate will vary in like amount.
- 2) If the change in the collective bargaining agreement cannot be determined in advance, the contract will be changed by the amount of the change in wage rate and all components of price that are dependent on the usage rate, such as payroll taxes, worker's compensation insurance, vacation, sick days, and pension, provided that profit shall not increase due to prevailing wage increases. The using agency shall have the option to cancel the contract if the new price is unacceptable.
- 3) If the initial prevailing wage, etc., cannot be determined prior to execution, contracts may be entered into and will remain valid for the stated term.
- d) If a collective bargaining agreement is in effect governing the type of printing, janitorial, window washing or security guard service sought, that agreement will define minimum wages, benefits and conditions that must be paid in order for a bidder to be considered responsible.
- e) For public works, location means the county where the physical work upon public works is performed, except that if there is not available in the county a sufficient number of competent skilled laborers, workers and mechanics to construct the public works efficiently and properly, "locality" includes any other county nearest the one in which the work or construction is to be performed and from which such persons may be obtained in sufficient numbers to perform the work.
- f) For printing contracts, location means one of the following areas:
  - 1) Cook County;
  - 2) Boone, Bureau, Carroll, Champaign, Dekalb, DeWitt, DuPage, Ford, Fulton, Grundy, Hancock, Henderson, Henry, Iroquois, Jo Daviess,

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Kane, Kankakee, Kendall, Knox, Lake, LaSalle, Lee, Livingston, Logan, Marshall, Mason, McDonough, McHenry, McLean, Mercer, Ogle, Peoria, Piatt, Putnam, Rock Island, Schuyler, Stark, Stephenson, Tazewell, Vermilion, Warren, Whiteside, Will, Winnebago, and Woodford counties;

- 3) Adams, Alexander, Bond, Brown, Calhoun, Cass, Christian, Clark, Clay, Clinton, Coles, Crawford, Cumberland, Douglas, Edgar, Edwards, Effingham, Fayette, Franklin, Gallatin, Greene, Hamilton, Hardin, Jackson, Jasper, Jefferson, Jersey, Johnson, Lawrence, Macon, Macoupin, Madison, Marion, Massac, Menard, Monroe, Montgomery, Morgan, Moultrie, Perry, Pike, Pope, Pulaski, Randolph, Richland, Saline, Sangamon, Scott, Shelby, St. Clair, Union, Wabash, Washington, Wayne, White, and Williamson counties.
- 4) Where the printing is performed in a plant outside the jurisdiction of this State, it shall be deemed produced in the Illinois locality in which delivery of the printing ordered is required to be made. Where such printing is required to be delivered to more than one Illinois locality, such printing shall be deemed produced in the Illinois locality to which the largest dollar volume of printing under the contract is to be delivered.
- g) For janitorial services, window washing and security guard services, location means the county in which the work is to be performed.
- h) Prevailing wages, benefits and conditions will be determined by the Illinois Department of Labor.

**Section 1.2570 Equal Employment Opportunity; Affirmative Action**

## a) Public Contracts

Every party to a public contract and every eligible bidder shall:

- 1) Refrain from unlawful discrimination and discrimination based on citizenship status in employment and undertake affirmative action to assure equality of employment opportunity and eliminate the effects of past discrimination;
- 2) Comply with the procedures and requirements of the Department of Human Rights (DHR) regulations concerning equal employment opportunities and affirmative action;
- 3) Provide such information, with respect to its employees and applicants for employment, and assistance as DHR may reasonably request;
- 4) Have written sexual harassment policies that shall include, at a minimum, the following information:
  - A) the illegality of sexual harassment;
  - B) the definition of sexual harassment under State law;
  - C) a description of sexual harassment, utilizing examples;
  - D) the vendor's internal complaint process, including penalties;
  - E) the legal recourse, investigative and complaint process available through DHR and the Human Rights Commission;

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- F) directions on how to contact DHR and the Commission; and
- G) protection against retaliation as provided by Section 6-101 of the Illinois Human Rights Act (IHRA) [775 ILCS 5]. A copy of the policies shall be provided to the Department of Human Rights upon request.

- b) Section 7-105A of the IHRA authorizes the Department of Human Rights to promulgate policies, rules and regulations to implement the provisions of the IHRA applicable to eligible bidders and public contractors. DHR has promulgated rules, 44 Ill. Adm. Code 750, that establish public contractor and eligible bidder duties, obligations, and reporting requirements. These rules require that certain employers register with DHR in order to be eligible for the award of certain public contracts (44 Ill. Adm. Code 750.Appendix A).

## SUBPART L: CONTRACT PRICING

**Section 1.2800 All Costs Included**

The IFB or RFP and any resulting contract should define whether prices cover transportation, transit insurance, delivery, installation, taxes, and any other costs.

## SUBPART M: CONSTRUCTION AND CONSTRUCTION RELATED PROFESSIONAL SERVICES

**Section 1.3005 Construction and Construction Related Professional Services**

Construction and construction-related services are procured by the CPOs for the Illinois Department of Transportation and the Capital Development Board under rules promulgated by those CPOs. This Part does not apply to those procurements except as may be specifically adopted by those CPOs in their rules. Rules promulgated by these CPOs may be found in:

- a) 44 Ill. Adm. Code, Subtitle B, Chapter IX (CPO - Department of Transportation);
- b) 44 Ill. Adm. Code, Subtitle B, Chapter XII (CPO - Capital Development Board).

## SUBPART N: REAL PROPERTY LEASES AND CAPITAL IMPROVEMENT LEASES

**Section 1.4005 Real Property Leases and Capital Improvement Leases**

Real property leases and capital improvement leases are subject to the requirements of this Part and those in 44 Ill. Adm. Code 5000. In the event of a conflict, 44 Ill. Adm. Code 5000 shall prevail.

## SUBPART O: PREFERENCES

**Section 1.4505 Procurement Preferences**



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The procurement preferences identified in Article 45 of the Code must be considered in developing procurement documents, conducting evaluations and drafting contracts. When any such preference is utilized, the Invitation for Bids, Request for Proposals, or other procurement request shall identify the preference and the conditions associated with such use. Subsequent Sections of this Subpart O identify conditions for the use of certain of the statutory preferences.

**Section 1.4510 Resident Bidder Preference**

- a) "Illinois resident vendor" as used in this Section means a person authorized to transact business in this State and having a bona fide establishment for transacting business within this State at which it was actually transacting business on the date when any competitive solicitation for a public contract was first advertised or announced, including a foreign corporation duly authorized to transact business in this State that has a bona fide establishment for transacting business within this State at which it was actually transacting business on the date when any competitive solicitation for a public contract is first advertised or announced.
- b) In breaking a tie, an Illinois resident vendor shall be given the award.
- c) The CPO shall maintain a list of states with in-state preference that shall be consulted in all procurements involving out-of-state vendors.

**Section 1.4530 Correctional Industries**

- a) The CPO shall make available to all SPOs a listing of the supplies or services available from the Department of Corrections and shall identify those that must be purchased from Corrections.
- b) Those items that must be purchased from Corrections may not be procured from any other source without the express written authorization of the CPO.
- c) Procurement Officers are authorized to procure from Corrections without seeking competition or giving public notice, but must inform the CPO of all such purchases.

**Section 1.4535 Sheltered Workshops for the Disabled**

- a) Use of Sheltered Workshop  
The Procurement Officer may determine to contract with a sheltered workshop on the list maintained by the CPO, and may do so without notice or competition.
- b) Conditions for Use  
The CPO shall, in consultation with the State Use Committee created by the Code (Section 45-35), determine which articles, materials, services, food stuffs and supplies that are produced or manufactured by persons with disabilities in State use sheltered workshops shall be

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given preference by purchasing agencies procuring those items. The CPO shall develop and distribute to the various purchasing and using agencies procedures for implementing this Section.

**c) Sheltered Workshop List**

The CPO shall maintain a list of all qualified sheltered workshops and shall provide to State agencies that list and the supplies and services each qualified sheltered workshop provides.

**d) Pricing Approval**

- 1) While notice and competition is not required prior to contracting with a sheltered workshop, prices must be reasonable. Whether a price is reasonable will be determined based upon current market prices, historical prices, prices received by other State agencies for similar supplies or services, the policy of the Code to promote procurements from sheltered workshops, and other such relevant factors.
- 2) The State Use Committee, established under Section 45-35 of the Code, must approve contracts for reasonableness of price if:
  - A) the supply or service would ordinarily be subject to competitive sealed bidding or competitive sealed proposals methods of source selection; or
  - B) the supply or service is bid and the sheltered workshop is selected even though not the lowest responsible bidder.
- 3) State Use Committee approval is not required if:
  - A) the contract does not exceed the bid limit set in Section 1.2020 of this Part and no bidding was conducted; or
  - B) the contract is let to the sheltered workshop under a competitive procedure.
- 4) When Committee approval is required, it will be given or denied in an expeditious manner so as not to disrupt procurement activities. Consideration will be at regularly scheduled meetings or through special telephone meetings conducted between regular meetings.

**Section 1.4540 Gas Mileage**

- a) Passenger automobile specifications shall require compliance with minimum gas mileage requirements established in Section 45-40 of the Code. Passenger automobiles must achieve at least the minimum average fuel economy in miles per gallon imposed upon manufacturers of vehicles under Title V of the Motor Vehicle Information and Cost Savings Act. (15 USC 2001)
- b) Passenger automobiles that do not meet the minimum gas mileage requirements may not be procured unless and until the SPO makes a written determination that a non-compliant automobile is necessary to carry out the function of the agency, the SPO's determination is signed by the executive head of the procuring agency and the signed determination is reviewed and approved by the CPO.
- c) The CPO may require use of a uniform form or format for the SPO's

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- d) In response to the SPO's determination, the CPO may suggest a more economical alternative to the agency head. If such a suggestion is made, the agency head must state in writing why the alternate vehicle will not allow the agency to carry out its functions. If the agency head confirms need for the non-compliant passenger automobile, that vehicle may be procured. Except in the case of a covert vehicle, notice that a non-compliant passenger automobile is being purchased will be placed in the Bulletin along with the reasons for such a decision.
- e) Passenger automobile does not include station wagons, vans, four-wheel drive vehicles, emergency vehicles, or police or fire vehicles.

## Section 1.4545 Small Business

## a) Set-Aside

The CPO may determine categories of supplies or service procurements that will be set aside for small business located in Illinois. The set-aside designation may be made for current and future procurements of a specific supply, service or construction, or for a class of like supplies, services or construction. A set-aside designation may last indefinitely or for a stated period of time.

## b) Small Business List

The CPO will maintain a list of responsible vendors that meet the criteria of small business. The CPO will periodically inform each purchasing agency of those vendors on the list and the supplies and services that each provides. A business that fits the definition of small on the day of bid or proposal opening will be considered small for the duration of the contract.

## c) Required Use

If a Procurement Officer wishes to make a procurement covered by a set-aside designation, the solicitation must note responses are limited to those from responsible small businesses. Bids or proposals received from large businesses will be rejected as nonresponsive.

## d) Withdrawal of Set-Aside

If the Procurement Officer determines that acceptance of the best bid or proposal will result in the payment of an unreasonable price, the Procurement Officer shall reject all bids or proposals and withdraw the designation of small business set-aside for the procurement in question. When a small business set-aside is withdrawn, notification shall be published in the Illinois Procurement Bulletin with an explanation. After withdrawal of the small business set-aside, the procurement shall be conducted in accordance with the limitations of the Code and this Part.

## e) Criteria for Small Business

Unless the CPO provides a definition for a particular procurement that reflects industrial characteristics, a small business is one:

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- 1) Independently owned and operated.
- 2) Not dominant in its field of operations. This means the business does not exercise a controlling or major influence in a kind of business activity in which a number of business concerns are primarily engaged. In determining dominance, consideration shall be given to all appropriate factors, including volume of business, number of employees, financial resources, competitive status or position, ownership or control of materials, processes, patents, license agreements, facilities, sales territory, and nature of business activity.
- 3) With annual sales for most recently ended fiscal year no greater than:
- A) \$7,500,000 for wholesale business;
  - B) \$3,000,000 for construction business; or
  - C) \$1,500,000 for retail business.
- 4) With no more than 250 employees if a manufacturing business.
- A) A manufacturing business shall calculate how many people it employs by determining its average full-time equivalent employment, based on the number of persons employed on a full-time, part-time, temporary or other basis, for its most recently ended fiscal year.
- B) If a manufacturing business has been in existence for less than a full fiscal year, its average employment should be calculated for the period through one month prior to the bid or proposal due date.
- 5) If the business is any combination of retailer, wholesaler or construction business, then the annual sales for each component may not exceed the amounts shown in subsection (g)(3). For example, a business that is both a retailer and wholesaler may not have total sales exceeding \$9,000,000 and the retail component may not exceed \$1,500,000 and the wholesale component may not exceed \$7,500,000. If the business is also a manufacturer, in addition to meeting the annual sales requirement, the number of manufacturing employees may not exceed the number shown in subsection (g)(4).
- 6) When computing the size status of a vendor, the number of employees and annual sales and receipts, as applicable, of the vendor and all affiliates shall be included. Concerns are affiliates when either one directly or indirectly controls or has the power to control the other, or when a third party or parties controls or has the power to control both. In determining whether concerns are independently owned and operated and whether affiliation exists, consideration shall be given to all appropriate factors, including use of common facilities, common ownership and management and contractual arrangements. However, a franchise relationship shall not affect small business status if the franchisee has the right to profit commensurate with ownership and bears the risk of loss or failure.

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- f) Vendors desiring to submit bids or proposals or to otherwise contract for items set aside for small businesses shall submit information verifying that the vendor qualifies as a small business under the Code. The CPO may establish procedures for verifying such information.

#### Section 1.4570 Contracting with Businesses Owned and Controlled by Minorities, Females and Persons with Disabilities

- a) Introduction  
The Business Enterprise Act for Minorities, Females, and Persons with Disabilities [30 ILCS 5/5] (Act) sets a goal (minimum 12%) for contracting with businesses owned or controlled by minorities, females, or persons with disabilities.
- b) Goal  
Each State agency subject to that Act shall establish a goal that at least 12% of the dollar value of State contracts be awarded to minority and female-owned businesses. Of that 12%, five shall be for female-owned businesses, two for businesses owned by persons with disabilities and not-for-profit agencies for the disabled, and the remaining five for other minority-owned businesses, unless these percentages are modified by the Council created under the Act.
- c) Upon direction of the CPO, and pursuant to direction from the Council, the procuring agencies may establish set-asides and other such preferences for vendors certified under that Act.
- d) Certification  
Certification procedures are set forth in rules governing the Business Enterprise Act (44 Ill. Adm. Code 10).
- e) List of Certified Businesses  
1) The CPO shall maintain a list of businesses that have been certified. This list shall be made available to all procuring agencies.

- 2) The names and addresses of certified vendors shall be made available to the public.

- f) Professional and Artistic Contract Reporting  
Professional and artistic contracts, which must be reported to the Business Enterprise Council pursuant to Section 6a of the Business Enterprise Act, shall be reported as follows:

- 1) Notice that an agency intends to enter into a professional and artistic contract shall be given to the Council. Notice may be mailed, hand delivered or given by fax, and must be submitted on the same date that the potential vendor is contacted. If the contract is advertised in the Bulletin, reporting to the Council is not required.
- 2) The notice shall include the agency name and address; contact person; contract reference number; date bid or proposal was first available; return dates and opening dates; term of the contract; services to be provided; special requirements; and dollar value.

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Notice should be given on the form available from the CPO.

## SUBPART P: ETHICS

## Section 1.5013 Conflicts of Interest

- a) This Section does not apply to those elected to local government, including school districts, nor does it apply to those elected to Federal offices in this State. This Section does apply to those elected to an office of Illinois State government.
- b) An individual has a direct pecuniary interest in a contract when the individual is owed a payment or otherwise receives a direct financial benefit in conjunction with performance of a contract, including finders fees and commission payments.
- c) Distributable income means the income of a company after payment of all expenses, including employee salary and bonus, and retained earnings, which is distributed to those entitled to receive a share of such income. In the case of a for-profit corporation, distributable income means "dividends". When calculating entitlement to distributable income the entitlement shall be determined at the end of the company's most recent fiscal year.
- d) This Section does not apply to contracts with licensed professionals provided such contracts are competitively bid. For purposes of this Section, "bid" means procured pursuant to the competitive procedures identified in Subpart E of this Part.

## Section 1.5015 Negotiations for Future Employment

- a) It is unlawful for any person employed in or on a continual contractual relationship with any of the offices or agencies of State government to participate in contract negotiations on behalf of that office or agency with any firm, partnership, association, or corporation with whom that person has a contract for future employment or is negotiating concerning possible future employment. [30 ILCS 500/50-15(a)]
- b) An individual who performs services pursuant to a contract and who meets the requirements of an "employee" as opposed to an independent contractor is in a "continued contractual relationship" from the effective date of the contract until such time as the contract is terminated.
- c) An individual who performs services pursuant to a contract and who meets the requirements of an "independent contractor" as opposed to an "employee" is in a "continual contracted relationship" if the contract term is indefinite, is automatically renewed, is renewable at the individual's option, is renewable unless the State must act to terminate, or has a definite term of at least three months.

## Section 1.5020 Exemptions



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If the Procurement Officer finds a conflict of interest under Section 50-13 of the Code with the vendor selected for award or contract negotiations, the Procurement Officer shall forward to the CPO the name of the vendor and a description of the proposed contract and of the potential conflict, and shall state why an exemption should be granted. The CPO shall submit the files to the Board of Ethics for its determination and with the approval of the CPO, the Board of Ethics may exempt named individuals from the prohibitions of Section 50-13 of the Code when, *in its judgment, the public interest in having the individual in the service of the State outweighs the public policy evidenced in that Section.* [30 ILCS 500/50-20]

## Section 1.5030 Revolving Door

Effective January 15, 1999, CPOs, SPOs, and Associate Procurement Officers (APOs) shall identify in writing their designees whose job, or whose position description, is at least 51% directly related to State procurement. The following activities are directly related to State procurement: Drafting specifications, preparing Invitations for Bids and Requests for Proposals, evaluating responses to Invitations for Bids and Requests for Proposals, negotiating contracts and supervising any of the foregoing. They shall maintain that information for a period of at least two years following the end or revocation of the designation.

## Section 1.5035 Disclosure of Financial Interests and Potential Conflicts of Interest

- a) For purposes of Section 50-35(a) of the Code, an "offer from responsive bidders or offerors" means only those offers that are received using an Invitation for Bids or Request for Proposals under Section 20-10, 20-15 or 20-35, or Article 35, of the Code. Disclosures are not required in small, sole source or emergency procurements.
- b) For purposes of:
  - 1) Section 50-35(b) of the Code, "parent entity" means a person who owns 100% of the bidding entity.
  - 2) Section 50-35(b)(1) of the Code, "contractual employment of services" means any contract to provide services to the State, whether as independent contractor or employee, that is by and between the State and the named individual.
- c) Distributable or distributive income means the income of a company after payment of all expenses, including employee salaries and bonuses, and retained earnings, which is distributed to those entitled to receive a share of such income.
- d) Personal services shall be any contract for services subject to the Code, including, by way of example, professional and artistic services, repair services, cleaning and guard services, but excludes contracts with employees who are exempt from the Code under Section 1-10(b)(4).

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- e) "Competitively bid" means a contract let pursuant to Sections 20-10, 20-15 and 20-35 of the Code.
- f) "Subject to federal 10K reporting" means subject to the reporting requirements of Section 13 or 15(d) of the Securities Exchange Act of 1934. "10K disclosure" means a report required under Section 13 or 15(d) of the Securities Exchange Act of 1934.
- g) Once a disclosure is made in relation to a particular contract, the disclosure need not be repeated if the contract is amended.
- h) 10K disclosures
  - 1) Any vendor subject to federal 10K reporting requirements may submit its 10K to the State in satisfaction of the disclosure requirement of Section 50-35(b) of the Code provided the vendor also identifies the specific sections or parts in the 10K disclosure where the State may find information, if any, pertaining to those who have an ownership interest or an interest in the distributable income of the vendor or its parent, or other information that the vendor knows or reasonably should know identifies a potential conflict of interest with the State. If the financial interest or conflict of interest information requested by the State is not in the 10K, but is in a document referenced in the 10K, or in a document that may be submitted to the SEC in conjunction with or in lieu of the 10K, then that additional documentation shall be provided as well.
  - 2) 10K disclosures are available for public review. Any potential conflict of interest identified by the public and brought to the attention of the CPO or SPO shall be investigated.
  - 3) In circumstances where a vendor may submit a 10K disclosure in lieu of the specific disclosure requirements of the Code and for purposes of the Procurement Officer's duty to consider any conflict or potential conflict of interest that may exist, but that is not subject to specific disclosure requirements of the Code and this Part, and that is not personally known by the Procurement Officer, "publicly known or reasonably available to the public" shall consist of information identified by the vendor in the 10K disclosure and any information disclosed pursuant to public review of the 10K disclosure.

## SUBPART Q: CONCESSIONS

## Section 1.5310 Concessions

- a) A concession is an authorization allowing use of State property for the purpose of making profit, including future profit.
- b) An authorization to allow use of State property by not-for-profit entities is not a concession or lease of State property under Article 53 of the Code.
- c) Proposed concessions, leases or other uses of State property must be coordinated with the State Property Control Act [30 ILCS 605] and

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rules implementing that Act.

## SUBPART R: COMPLAINTS, PROTESTS AND REMEDIES

## Section 1.5510 Complaints Against Vendors

- a) The purpose of this Section is to document performance of vendors.
- b) Whenever a vendor fails to meet contract requirements, including but not limited to failure to deliver on time or meet specifications, the using agency shall take appropriate action to initiate a complaint to the vendor.
- c) For relatively minor infractions, the using agency may initiate contact by telephone or in person. If not resolved by this action, a written complaint shall be made.
- d) For other infractions, the using agency shall send a written complaint to the vendor detailing the problem. For complaints regarding contracts established by the CPO, a form available from the CPO shall be used for processing complaints.
- e) A copy of all written complaints and the resolution or status shall be filed with the CPO.

## Section 1.5520 Suspension

- a) Application  
This Section applies to all debarments or suspensions of vendors from consideration for award of contracts under the Code.
- b) The CPO may suspend a vendor from doing business with the State, with one or more agencies, or for specific types of supplies or services. A suspension may be issued upon a showing the vendor violated the Code or this Part, or failed to conform to specifications or terms of delivery.
- c) When the CPO finds cause exists for suspension, a notice of suspension, including a copy of such determination, shall be sent to the suspended vendor. Bids or proposals will not be solicited from the suspended vendor, and, if received, will not be considered during the period of suspension.
- d) A vendor may be suspended for a period of time commensurate with the seriousness of the offense, but for no more than five years. The suspension will be effective seven calendar days after receipt of notice unless an objection is filed. If an objection is filed, suspension would not become effective until the evaluation of the objection is completed.
- e) The CPO may debar a vendor. Debarment is the permanent suspension of a vendor from doing business with the State. A debarment may only take place in those instances involving bribery or attempted bribery of a State of Illinois officer or employee, or as otherwise allowed or required by law. Bids or proposals received from the debarred vendor will not be considered.

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- f) The CPO shall maintain a master list of all suspensions and debarments. The master list will retain information concerning suspensions and debarments as public records. Such records will be maintained for a period of at least three years following the end of the suspension or debarment. Such public information may be considered in determining responsibility.

## Section 1.5530 Resolution of Contract Controversies

- a) Authority to Resolve Controversies  
The Procurement Officer shall have authority to resolve controversies, but the executive head of the purchasing agency may set limits on such authority.
- b) Authority of Using Agency  
The using agency has the authority to accept delivery of supplies or services in accordance with contract requirements as satisfactory adjustment of a complaint.
- c) Substitution of Terms/Price Reduction  
If the vendor proposes to make an adjustment by:
  - 1) substituting an alternative specification, or
  - 2) reducing the contract price by a certain amount to compensate for some failure to provide full performance under the contract,
 such proposal must be referred to and approved by the Procurement Officer, but not a designee.
- d) Cancellation for Breach of Contract  
In any of the following cases the Procurement Officer shall have the right to terminate or rescind any contract entered into under this Part:
  - 1) In the event the successful bidder fails to furnish a satisfactory performance bond within the time specified.
  - 2) In the event the vendor fails to make delivery at the place or within the time specified in the contract or as ordered by the purchasing agency.
  - 3) In the event any supplies or services provided under the contract are rejected (for not meeting specification, not conforming to sample, or not being in good condition when delivered) and are not promptly replaced by the vendor. If there are repeated rejections of the vendor's supplies or services, this shall be grounds for termination or rescission, even though the vendor offers to replace the supplies or services promptly.
  - 4) In the event the vendor is guilty of misrepresentation (for example, misbranding of food or drugs) in connection with another contract for the sale of supplies or services to the State such that the vendor cannot reasonably be depended upon to fulfill his obligations as a responsible vendor under any of his contracts with the State.
  - 5) In the event the vendor should be adjudged bankrupt; enter into receivership or make a general assignment for the benefit of

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creditors due to insolvency; disregard laws, rules, or instructions of the Procurement Officer; or act in violation of any provision of the contract; or if the contract conflicts with any statutory or constitutional provision of the State of Illinois or of the United States.

6) In the event of any other breach of contract or other unlawful act by the vendor.

e) Cancellation for Fraud, Collusion, Illegality, Etc.

The State may cancel any contract it established if there is sufficient evidence to show that:

- 1) The contract was obtained by fraud, collusion, conspiracy, or other unlawful means; or
- 2) The contract conflicts with any statutory provision of the State of Illinois or of the United States.

f) Withholding Money to Compensate State for Damages

If a contract is terminated or rescinded under this Section, the State may deduct from whatever is owed the vendor on that or any other contract an amount sufficient to compensate the State of Illinois for any damages suffered by it because of the vendor's breach of contract or other unlawful act on the vendor's part on which the cancellation is based.

g) Damages

The damages for which the State may be compensated as provided in this Section or by a suit on the vendor's performance bond or by other legal remedy shall include, but are not limited to, the following:

- 1) the additional cost of supplies or services bought elsewhere;
- 2) cost of repeating the procurement procedure;
- 3) any expenses incurred because of delay in receipt of supplies or services; and
- 4) any other damages caused by the vendor's breach of contract or unlawful act.

## Section 1.5540 Violation of Law or Rule

a) Determination that Solicitation or Award Violates Law

If the CPO or the SPO finds that the solicitation or proposed award is in violation of statute or rule, the CPO or the SPO may cancel the solicitation or proposed award, or make modifications to correct the violation, if such correction may be legally accomplished.

b) Determination that Contract Violates the Code or this Part

Contracts based on awards or solicitations that were in violation of law shall be terminated at no cost to the State unless statute or rule allows the State to modify, ratify or take other corrective action.

c) Effect of Declaring a Contract Null and Void

In all cases in which a contract is voided, the State shall endeavor to return those supplies delivered under the contract that have not been used or distributed. No further payments shall be made under the contract.

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## Section 1.5550 Protests

a) Protest Resolution by the Procurement Officer

An actual or prospective bidder, offeror, or vendor that may be aggrieved in connection with a procurement may file a protest on any phase of solicitation or award, including but not limited to specifications preparation, bid solicitation, or award.

b) Complaint to Procurement Officer

Complainants should seek resolution of their complaints initially with the office that issued the solicitation. Such complaints may be made verbally or in writing.

c) Filing of Protest

- 1) Protests shall be made in writing to the Procurement Officer, if applicable, and shall be filed within 7 calendar days after the protester knows or should have known of the facts giving rise to the protest. A protest is considered filed when physically received by the Procurement Officer. Protests filed after the 7 calendar day period shall not be considered. In regard to a protest regarding specifications, the protest must be received within 7 calendar days after the date the solicitation was issued, and in any event must be received by the State at the designated address before the date for opening of bids or proposals.

- 2) To expedite handling of protests, the envelope should be labeled "Protest". The written protest shall include as a minimum the following:

- A) the name and address of the protester;
- B) appropriate identification of the procurement, and, if a contract has been awarded, its number;
- C) a statement of reasons for the protest; and
- D) supporting exhibits, evidence, or documents to substantiate any claims unless not available within the filing time, in which case the expected availability date shall be indicated.

d) Requested Information; Time for Filing

Any additional information requested by the State shall be submitted within the time periods established by the requesting source in order to expedite consideration of the protest. Failure of the protesting party to comply expeditiously with a request for information by the Procurement Officer may result in resolution of the protest without consideration of that information.

e) Stay of Procurements During Protest

When a protest has been timely filed and before an award has been made, the Procurement Officer shall make no award of the contract until the protest has been resolved. If timely received but after award, the award shall be revoked without penalty and no award made until the protest has been resolved. In either case the Procurement Officer may make the award or reinstate the award upon a determination



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that the needs of the State require an immediate award and performance under the contract.

- f) Decision by the Procurement Officer  
A decision on a protest shall be made by the Procurement Officer as expeditiously as possible after receiving all relevant, requested information. If a protest is sustained, the available remedies include, but are not limited to, reversal of award and cancellation or revision of the solicitation.
- g) Effect of Judicial or Administrative Proceedings  
If an action concerning the protest has commenced in court, the Procurement Officer shall not act on the protest, but shall refer the protest to the Attorney General. This Section shall not apply when a court requests, expects, or otherwise expresses interest in the decision of the Procurement Officer.

## SUBPART S: SUPPLY MANAGEMENT AND DISPOSITIONS

## Section 1.6010 Supply Management and Dispositions

- a) Inventory Responsibility  
Each State agency shall have general supervision of and accountability for tangible personal property and other supplies under its control subject to the requirements of the State Property Control Act [30 ILCS 605] and rules implementing that Act.
- b) Supply Management  
State agencies shall order supplies on a schedule and in quantities so as to maintain no more than a 12 month supply in inventory. Supplies shall be ordered so as to maintain the minimum inventory commensurate with ability to meet agency needs. This 12-month inventory restriction does not apply to lifesaving medications, mechanical spare parts, or when a greater quantity is needed to meet minimum order quantities.
- c) Inventory  
State agencies shall periodically inventory all warehouses and similar storage areas under their jurisdiction.
- d) Report of Inventory  
The CPO may require that agencies note on purchase requests compliance with the 12 month restriction on inventory.
- e) Transfer of Excess Supplies  
Insofar as feasible, practical and in accordance with other applicable law, the SPOs shall transfer excess supplies to the Department of Central Management Services; Surplus Property Division for disposition under the State Property Control Act [30 ILCS 605].

## SUBPART T: GOVERNMENTAL JOINT PURCHASING

## Section 1.6500 General

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In an effort to make the procurement process more efficient, State and other governmental units (including not-for-profit entities authorized by law to participate in joint purchasing) may agree to utilize each others' procurement contracts. This authority is governed by this Subpart and the Governmental Joint Purchasing Act [30 ILCS 525]. Only the CPO may enter into contracts under the Act when the State is a party to the contract.

## Section 1.6510 No Agency Relationship

In any joint procurement situation, the governmental unit must issue its own purchase order, accept its own deliveries and make its own payments. The State of Illinois shall have no obligation to the vendor for payment of orders placed by other governmental units.

## Section 1.6520 Obligations of Participating Governmental Units

If governmental units determine to use contracts established by the CPO, they must:

- a) provide to the CPO a copy of the ordinance or resolution passed by the governing body of the governmental unit giving authority to make purchases from contracts issued by the State of Illinois;
- b) make all purchases under the State contracts for public use only and specifically prohibit personal use or consumption by any individual, public employee or official;
- c) make payment to the vendor within 30 days after receipt of supplies or services;
- d) place orders with the supplier directly using their own purchase order forms. A copy of the purchase order must also be sent to the CPO. This copy will be used for statistical purposes and will serve as notice that the governmental unit has complied with the bid action;
- e) inspect all items immediately for compliance with the contract specifications and report to the CPO any failure of suppliers to comply with contract requirements; and
- f) attempt to resolve disputes with the vendor before involving the CPO.

## Section 1.6530 Centralized Contracts - Estimated Quantities

Certain centralized contracts for estimated quantities contain a price extension clause permitting governmental units to utilize the contract by placing an order directly with the vendor. Governmental units using these contracts must comply with the following provisions or risk being removed from active participation in this program:

- a) the State purchase order or contract reference number as indicated in the "Notice of Awards" must be shown;
- b) the purchase order or contract reference number must contain a complete description of the item; item number; brand and/or model number; unit of measure; unit price; and price extension;
- c) place orders for at least the minimum quantities shown on the "Notice

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of Awards" (Vendors are not required to deviate from the terms of their contract.); and

d) read the "Notice of Awards" carefully to ensure understanding of special provisions particularly as it may pertain to catalogs and price lists.

## Section 1.6535 Centralized Contracts - Definite Quantities

- a) Certain items, such as foods and highway salt, are purchased under definite quantity contracts. Governmental units interested in such items, or other items not covered under the estimated quantity contracts, must contact the CPO for instruction on use of those contracts.
- b) If purchase requests are received after the Invitation for Bids has been issued, if the quantities are too small for centralized purchase, or do not lend themselves to joint purchasing, the State will return the purchase request to the governmental unit.
- c) Governmental units must consider the following factors prior to filing purchase requests for definite quantities:

- 1) The State issues Invitation for Bids and makes awards based on the requirements covered by purchase requests. The State does not take bids to obtain estimated prices. Withdrawal from participation in the contract after solicitation for bids has been made by the State will not be permitted except in very unusual cases.
- 2) Any governmental unit having an existing contract shall complete that contract before participating in joint purchasing for that item.
- 3) Overlapping time periods must be identified in the joint purchase requisition so there will be no misunderstanding as to whether or not existing commitments will be honored or as to the date a future commitment will begin.
- 4) It should be clearly understood that the governmental unit has delegated its authority to purchase items covered by purchase requests and that the resulting award will be made in exactly the same manner as if the purchase requests had been submitted by a State agency.
- 5) Specifications established in the Invitation for Bids shall be accepted.
- 6) Location of the vendor will not be a factor in determining the award, except as may be established by State law.
- 7) The governmental units are required to purchase items awarded from the successful bidder.

## SUBPART U: MISCELLANEOUS PROVISIONS OF GENERAL APPLICABILITY

## Section 1.7000 Severability

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If any provision of this Part or any application thereof is held invalid, such invalidity shall not affect other provisions or applications of this Part that can be given effect without such invalid provision or application.

## Section 1.7010 Government Furnished Property

If the State provides any property to the vendor in furtherance of the contract, such property shall remain the property of the State but may be consumed by the vendor if necessary to complete the contract. Vendor will issue a receipt for the property and will be responsible for its safekeeping and for return of unused property to the State.

## Section 1.7015 Inspections

- a) Inspection of Plant or Site  
The State may enter a vendor's or subcontractor's plant or place of business to:
- 1) inspect supplies or services for acceptance by the State pursuant to the terms of a contract;
  - 2) audit the books and records of any vendor or subcontractor pursuant to Section 1.7020 (Records and Audits) of this Part;
  - 3) investigate an action to debar or suspend a person from consideration for award of contracts pursuant to the Code;
  - 4) determine whether the standards of responsibility have been met or are capable of being met;
  - 5) determine if the contract is being performed in accordance with its terms; and
  - 6) accomplish any other purpose permitted by law.
- b) Inspection and Testing of Supplies and Services  
State contracts may provide that the State may inspect supplies and services at the vendor's or subcontractor's facility and perform tests to determine whether the supplies or services conform to solicitation requirements, or, after award, to contract requirements, and are therefore acceptable. Such inspections and tests shall be conducted in accordance with the terms of the solicitation and contract.
- 2) Procedures for Trial Use and Testing. The Procurement Officers may establish operational procedures governing the testing and trial use of equipment, material, and other supplies by any State agency, and the application of resulting information and data to specifications or procurements.
- c) Conduct of Inspections
- 1) Inspectors. Inspections or tests shall be performed so as not to unduly delay the work of the vendor or subcontractor. No inspector other than the Procurement Officer may change any provision of the specifications or the contract without written authorization of the Procurement Officer. The presence or

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absence of an inspector shall not relieve the vendor or subcontractor from any requirements of the contract.

- 2) Location. When an inspection is made in the plant or place of business of a vendor or subcontractor, such vendor or subcontractor shall provide without charge all reasonable facilities and assistance for the safety and convenience of the person performing the inspection or testing.

- 3) Time. Inspection or testing of supplies and services performed at the plant or place of business of any vendor or subcontractor shall be performed at reasonable times.

d) Inspection of Construction Projects

On-site inspection of construction shall be performed in accordance with the terms of the contract.

Section 1.7020 Records and Audits

a) Retention of Books and Records

Books and records that relate to performance of a State contract, including subcontracts, and that support amounts charged to the State, shall be maintained:

- 1) by a vendor, for three years from the date of final payment under the prime contract;
- 2) by a subcontractor, for at least three years from the date of final payment under the subcontract; and
- 3) by a vendor and subcontractor for such longer period of time as is necessary to complete ongoing or announced audits.

b) Contract Audit

- 1) Types of Contracts Audited. The type of contract under which books and records should be audited is that in which price is based on costs or is subject to adjustment based on costs, or that in which auditing would be appropriate to assure satisfactory performance, such as a time and materials contract.

- 2) Situations in which an audit may be warranted include but are not limited to when a question arises in connection with:

- A) the financial condition, integrity, and reliability of the vendor or subcontractor;
- B) any prior audit experience;
- C) the adequacy of the vendor's or subcontractor's accounting system;
- D) the number or nature of invoices or reimbursement vouchers submitted by the vendor or subcontractor for payment;
- E) the use of federal assistance funds;
- F) the fluctuation of market prices affecting the contract; or
- G) any other situation in which the Procurement Officer finds that such an audit is necessary for the protection of the State's best interest.

Section 1.7025 Written Determinations

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a) Preparation and Execution

When the Code or this Part requires a written determination, the officer required to prepare the determination may delegate its preparation, but the responsibility for and the execution of the determination shall not be delegated.

b) Content

Each written determination shall set out sufficient facts, circumstances, and reasoning as will substantiate the specific determination that is made.

c) Obtaining Supporting Information

While an officer is responsible for the execution of the written determination, other State personnel, particularly technical personnel and appropriate personnel in the purchasing agency, are responsible for furnishing to the cognizant official, in an accurate and adequate fashion, the information pertinent to the determination. When requested, such information shall be furnished in writing to the cognizant official who shall have the authority to decide the final form and content of the determination and to resolve any questions or conflicts arising with respect to the determination.

d) Forms

The CPO is authorized to prescribe methods and operational procedures to be used in preparing written determinations.

e) Retention

Each written determination shall be filed in the solicitation or contract file to which it applies, shall be retained as part of such file for so long as the file is required to be maintained, and, except as otherwise provided by statute or rule, shall be open to public inspection.

Section 1.7030 No Waiver of Sovereign Immunity

Nothing in this Part shall be deemed to be a waiver of sovereign immunity.



## CHIEF PROCUREMENT OFFICER FOR PUBLIC INSTITUTIONS OF HIGHER EDUCATION

## NOTICE OF ADOPTED RULES

- 1) Heading of the Part: Procurement Rules of the Chief Procurement Officer for Public Institutions of Higher Education

- 2) Code Citation: 44 Ill. Adm. Code 526

- 3) Section Numbers:

Adopted Action:  
 526.01 New Section  
 526.03 New Section  
 526.05 New Section  
 526.08 New Section  
 526.10 New Section  
 526.15 New Section  
 526.25 New Section  
 526.525 New Section  
 526.1005 New Section  
 526.1010 New Section  
 526.1011 New Section  
 526.1030 New Section  
 526.1080 New Section  
 526.1501 New Section  
 526.1510 New Section  
 526.1525 New Section  
 526.1545 New Section  
 526.1550 New Section  
 526.1580 New Section  
 526.2005 New Section  
 526.2010 New Section  
 526.2012 New Section  
 526.2015 New Section  
 526.2020 New Section  
 526.2025 New Section  
 526.2030 New Section  
 526.2035 New Section  
 526.2036 New Section  
 526.2037 New Section  
 526.2038 New Section  
 526.2040 New Section  
 526.2043 New Section  
 526.2044 New Section  
 526.2045 New Section  
 526.2046 New Section  
 526.2047 New Section  
 526.2050 New Section  
 526.2055 New Section  
 526.2060 New Section  
 526.2080 New Section  
 526.2560 New Section  
 526.2570 New Section

## CHIEF PROCUREMENT OFFICER FOR PUBLIC INSTITUTIONS OF HIGHER EDUCATION

## NOTICE OF ADOPTED RULES

526.3005 New Section  
 526.4005 New Section  
 526.4010 New Section  
 526.4015 New Section  
 526.4020 New Section  
 526.4025 New Section  
 526.4030 New Section  
 526.4035 New Section  
 526.4040 New Section  
 526.4505 New Section  
 526.4510 New Section  
 526.4530 New Section  
 526.4535 New Section  
 526.4540 New Section  
 526.4545 New Section  
 526.4570 New Section  
 526.5013 New Section  
 526.5020 New Section  
 526.5023 New Section  
 526.5030 New Section  
 526.5035 New Section  
 526.5325 New Section  
 526.5520 New Section  
 526.5530 New Section  
 526.5540 New Section  
 526.5550 New Section  
 526.6500 New Section  
 526.6510 New Section  
 526.7000 New Section  
 526.7005 New Section  
 526.7010 New Section  
 526.7015 New Section  
 526.7020 New Section  
 526.7030 New Section

- 4) Statutory Authority: [30 ILCS 500]

- 5) Effective Date of Rule: November 20, 1998

- 6) Do these adopted rules contain an automatic repeal date? No

- 7) Do these adopted rules contain incorporations by reference? No

- 8) A copy of the adopted rule, including any material incorporated by reference, is on file in the agency's principal office and is available for public inspection.

- 9) Notice of proposed rules published in Illinois Register: June 19, 1998

## CHIEF PROCUREMENT OFFICER FOR PUBLIC INSTITUTIONS OF HIGHER EDUCATION

## NOTICE OF ADOPTED RULES

22 Ill Reg 10719

10) Has JCAR issued a Statement of Objections to these rules? No

11) Differences between proposal and final version:

1. In addition to the following substantive changes, various stylistic, typographical, and grammatical changes have been made of a non-substantive nature.
2. In the Title 44: Subtitle B: under Chapter II, delete all text after "Education".
3. In the Table of Contents, added Section "526.1080 Illinois Mathematics and Science Academy" and moved the rest of the text down 1 line.
4. In the Table of Contents, changed Section "526.1520" to "526.1525 Bulletin Content".
5. In the Table of Contents, added "526.7005 Supply Inventory".
6. In Section 526.15, under "Contract", deleted "issued by or on behalf of any University, or contracts, other than for "concessions", where a University is a party, but has no financial obligation to the other parties" after "bonds", and added "or contracts relating to bonds issued by or on behalf of a State agency when the contractor or vendor is neither selected nor paid by the State agency".
7. In Section 526.15, under "Purchase of Care", deleted "in connection with" and added "including a recipient of services from a University".
8. In Section 526.15, under "Purchase of "Care", deleted "operated by a University".
9. In Section 526.15, under "Purchase of Care", deleted the last two sentences: "Services included those that are a necessary adjunct to the provision of the State aid program services or the operation of the university program (e.g., services of an HMO or other managed care entity, case management, utilization review, quality management and administrative services). Services provided to an application for a State aid program necessary to determine eligibility for the program are included within this definition."
10. In Section 526.15, added "'Procurement Officer" - The Chief Procurement Officer (CPO) or appropriate State Purchasing Office (SPO) who conducts the particular procurement, or a designee of either."
11. In Section 526.1030(a), after "University" added "under the authority

## CHIEF PROCUREMENT OFFICER FOR PUBLIC INSTITUTIONS OF HIGHER EDUCATION

## NOTICE OF ADOPTED RULES

of the CPO".

12. Added the following section heading: "Section 526.1080 Illinois Mathematics and Science Academy". Next line, added the following: "As authorized in Section 1.1080 of Part 1, the Illinois Mathematics and Science Academy and its SPO may procure supplies and services for the operation of the Academy through the CPO for Higher Education. All such procurement for the Academy shall be made in accordance with the requirements of this Part 526."
13. Added a new section, "Section 526.1525 Bulletin Content
  - a) Invitations for Bid
 

Notice of each procurement request governed by the Code that must be conducted by competitive sealed bidding, including multi-step sealed bidding, competitive sealed proposals, or competitive selection procedures, shall be placed in the Bulletin in accordance with Section 15-25(a) of the Code.
  - b) Contracts Let or Awarded
 

Notice of each contract awarded that was subject to a notice in subsection (a) shall be placed in the Bulletin in accordance with Section 15-25(b) of the Code.
  - c) Emergency Procurement
 

Information regarding emergency procurements shall be published in the Bulletin in accordance with Sections 15-25(c) and 20-30 of the Code and Section 526.2030(f)(3) of this Part.
  - d) Sole Source Procurements
 

Information regarding sole source procurements shall be published in the Bulletin in accordance with Section 20-25 of the Code and Section 526.2025 of this Part."
14. In Section 526.1545, added after the period "Upon direction of the CPO, the Official State Newspaper may be used as a substitute for the hardcopy of the Bulletin in the event the hardcopy cannot be published."
15. In Section 526.2005(l)(2), after "submit" added "to the SPO".
16. In Section 526.2020(a)(1), deleted "\$10,000" and added "\$25,000".
17. In Section 526.2025(b)(9), deleted "mandated" and added "participation in mandated educational, research, public service, or athletic".
18. In Section 526.2025(b)(9), deleted "educational, research, public service, or athletic".
19. Changed Section 526.2025(e) to "announcement pursuant to Sections 15-25 and 20-25 of the Code".

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20. In Section 526.2025(e), deleted "The contract price will not be published with the notice of award but such notice shall indicate that price information is available to the public, upon request, from the SPO who conducted the procurement".

21. In Section 526.2025(e), added the following subsection heading: "e) Treatment of Entertainment and Athletic Events". Next line, added the following: "The procedures set forth in subsections (f) and (h) of this Section are not required for procurements of entertainment performances or athletic events. Generic sole source notices for entertainment performances or athletic events may be published in the Bulletin on a continuous or periodic basis as required to meet the needs of the entertainment or athletic venue. Contracts for entertainment performances or athletic events may be executed by the SPO on any date provided that the notice has been published for at least 14 days prior to the date of execution. Notices of contracts awarded for entertainment performances or athletic events shall be published in the Bulletin as soon as practicable after the contracts are cleared by the venue for public announcement. The contract price will not be published with the notice of award but such notice shall indicate that price information is available to the public, upon request, from the SPO who conducted the procurement."

22. In Section 526.2025(h), previously (g), added "In the rare instance" before "Where" and made "Where" lower case.

23. In Section 526.2025(h), previously (g), added "(for example, in connection with the purchase of a complete manuscript or art collection or other rare or one-of-a-kind items)" after "services".

24. In Section 526.2030(b)(1)(e), changed "Code" to "Part".

25. In Section 526.2030(b)(1)(F), added "quick" before purchase and added quotation mark after "purchase".

26. In Section 526.2030(f)(3), added "In the rare instance" before "Where" and made "Where" lower case.

27. In Section 526.2030(f)(3), added "(for example, in connection with the purchase of a complete manuscript or art collection or other rare or one-of-a-kind items)" after "services".

28. In Section 526.2035(h)(2), deleted "only".

29. In Section 526.2035(m), deleted "opened and" after "be".

30. In Section 526.2036(c), deleted "Master" and added "Term and Condition" before "Contracts".

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31. In Section 526.2036(c)(1), deleted "master" and added "term and condition" before "contract".

32. In Section 526.2036(c)(2), deleted "master" and added "term and condition" before "contract".

33. In Section 526.2036(f), deleted the entire sentence and added "Requirements of the Code and this Part may be modified or adapted to meet Federal requirements."

34. In Section 526.2036, added the following subsection heading: "1) Printing Cost Offsets". Next line, added the following: "In accordance with University policies, the University may provide advertising rights in printed products to a vendor or receive free copies of printed products from a vendor in order to reduce the overall cost of a printing contract. Procurement by competitive sealed bid or competitive sealed proposal is required when the net printing cost, after offset, exceeds the small purchase limit of Section 526.2020 of this Part".

35. In Section 526.2560(a), added "at least" before "\$2,000".

36. In Section 526.3005(d), dropped "No amount of funds, in addition to" down one line and made this the beginning of a new subsection e) and added new subsection e) titled "Additional Work".

37. In Section 526.3005, added the following subsection heading: "g) Construction Manager Services". Next line, added the following: "Procurement of a Construction Manager for project management services which may include, but are not limited to, scheduling, contractor coordination, and administration of pay requests but not including design services, shall be made in accordance with Section 526.2015 of this Part (if the services to be performed are non-professional in nature) or Section 526.2035 of this Part (if the services to be performed include professional or artistic services)."

38. In Section 526.1015(e)(4), deleted "as provided in Section 526.4020(a)(2))" after "Bulletin".

39. In Section 526.4505, added the following sentence at the end: "Any preferences applicable to an individual procurement will be stated in the solicitation for that procurement".

40. In Section 526.5325, added "The University shall award concessions to property under its jurisdiction at its discretion in accordance with University policies." at the beginning of the paragraph.

41. In Section 526.5325, deleted "In accordance with the requirements of



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Section 53-25 of the Code," and replaced "all" with "All".

42. In Section 526.5325, added "and approved by the "CPO. Other types of concessions will be reported separately in a standardized format approved by the CPO." after "Universities".

43. In Section 526.6500, deleted "(Joint Purchasing Act)".

44. In Section 526.7015(a), added ", under the authority of the CPO," after "University" and deleted "or subcontractor's".

45. In Section 526.7015(a)(2), (c)(1), (c)(2), and (c)(3) deleted "or subcontractor".

46. In Section 526.7020(a), added "and" after the semicolon.

47. In Section 526.7020, deleted (b) entirely.

48. In Section 526.7020, changed "c)" to "b)" and deleted "and subcontractor".

12) Have all the changes agreed upon by the agency and JCAR been made as indicated in the agreement letter issued by JCAR? Yes

13) Will this rule replace an Emergency Rule currently in effect? Yes

14) Are there any amendments pending on this Part? No

15) Summary and Purpose of Rule: These procurement rules implement Public Act 90-572 by providing for a new system for the procurement of supplies and services by the public universities.

16) Information and questions regarding this rule shall be directed to:

Mr. Robert C. Baker  
University of Illinois at Urbana-Champaign  
506 S. Wright St., m. 207  
Urbana, IL 61801  
217/333-3582  
FAX: 217/244-7879  
e-mail: rbaker@uiuc.edu

The full text of the Adopted Rules begin on the next page:

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## NOTICE OF ADOPTED RULES

TITLE 44: GOVERNMENT CONTRACTS, PROCUREMENTS AND PROPERTY MANAGEMENT  
SUBTITLE B: SUPPLEMENTAL PROCUREMENT RULES

CHAPTER II: CHIEF PROCUREMENT OFFICER FOR PUBLIC INSTITUTIONS OF HIGHER EDUCATION

## PART 526

PROCUREMENT RULES OF THE CHIEF PROCUREMENT OFFICER FOR PUBLIC INSTITUTIONS OF HIGHER EDUCATION

## SUBPART A: GENERAL

Section	Title
526.01	Authority
526.03	Policy
526.05	Implementation of This Part
526.08	Application
526.10	Definition of Terms Used in This Part
526.15	Property Rights
526.25	

## SUBPART B: PROCUREMENT RULES

Section	Rules
526.525	

## SUBPART C: PROCUREMENT AUTHORITY

Section	Rules
526.1005	Procurement Authority of State Purchasing Officers
526.1010	Appointment of State Purchasing Officers
526.1011	Procurement Authority of the CPO
526.1030	Other Procurement Authority of the Universities
526.1080	Illinois Mathematics and Science Academy

## SUBPART D: PUBLICIZING PROCUREMENT ACTIONS

Section	Rules
526.1501	Higher Education Volume of Illinois Procurement Bulletin
526.1510	Publication of Higher Education Bulletin
526.1525	Bulletin Content
526.1545	Supplemental Notice
526.1550	Error in Notice
526.1580	Direct Solicitation

## SUBPART E: SOURCE SELECTION AND CONTRACT FORMATION

Section	Rules
526.2005	General Provisions

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526.2010 Competitive Sealed Bidding  
 526.2012 Multi-Step Sealed Bidding  
 526.2015 Competitive Sealed Proposals  
 526.2020 Small Purchases  
 526.2025 Sole Economically Feasible Source Procurement  
 526.2030 Emergency Procurements  
 526.2035 Competitive Selection Procedures for Professional and Artistic Services  
 526.2036 Other Methods of Source Selection  
 526.2037 Tie Bids and Proposals  
 526.2038 Modification or Withdrawal of Bids or Proposals; Mistakes  
 526.2040 Cancellation of Solicitations; Rejection of Bids or Proposals

## SUBPART F: SUPPLIERS, PREQUALIFICATION AND RESPONSIBILITY

## Section

526.2043 Suppliers  
 526.2044 Vendor List/Required Use  
 526.2045 Prequalification  
 526.2046 Responsibility

## SUBPART G: BID, PROPOSAL AND PERFORMANCE SECURITY

## Section

526.2047 Security Requirements

## SUBPART H: SPECIFICATIONS AND SAMPLES

## Section

526.2050 Specifications and Samples

## SUBPART I: CONTRACT TYPE

## Section

526.2055 Types of Contracts

## SUBPART J: DURATION OF CONTRACTS

## Section

526.2060 Duration of Contracts - General

## SUBPART K: PROCUREMENT FILES

## Section

526.2080 Written Determinations; Other Procurement Records

## SUBPART L: CONTRACT WORKING CONDITIONS

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Section  
 526.2560 Prevailing Wage  
 526.2570 Equal Employment Opportunity; Affirmative Action

## SUBPART M: CONSTRUCTION AND CONSTRUCTION RELATED SERVICES

## Section

526.3005 Construction and Construction Related Services

## SUBPART N: REAL PROPERTY LEASES AND CAPITAL IMPROVEMENT LEASES

## Section

526.4005 Applicability  
 526.4010 Authority  
 526.4015 Method of Source Selection  
 526.4020 Request for Information  
 526.4025 Lease Requirements  
 526.4030 Purchase Option  
 526.4035 Rent Without Occupancy  
 526.4040 Local Site Preferences

## SUBPART O: PREFERENCES

## Section

526.4505 Procurement Preferences  
 526.4510 Resident Vendor Preference  
 526.4530 Correctional Industries  
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 526.4540 Gas Mileage  
 526.4545 Small Business  
 526.4570 Contracting with Businesses Owned and Controlled by Minorities, Females and Persons with Disabilities

## SUBPART P: ETHICS

## Section

526.5013 Conflicts of Interest Prohibited by the Code  
 526.5020 Exemptions  
 526.5023 Other Conflicts of Interest  
 526.5030 Revolving Door Prohibition  
 526.5035 Disclosure of Financial Interests and Potential Conflicts of Interest

## SUBPART Q: CONCESSIONS

## Section

526.5325 Granting of Concessions/Reporting

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## SUBPART R: COMPLAINTS, PROTESTS AND REMEDIES

Section  
526.5520 Suspension  
526.5530 Cancellation of Contracts  
526.5540 Violation of Statute or Rule  
526.5550 Protests

## SUBPART S: GOVERNMENTAL JOINT PURCHASING

Section  
526.6500 General  
526.6510 No Agency Relationship

## SUBPART T: MISCELLANEOUS PROVISIONS OF GENERAL APPLICABILITY

Section  
526.7000 Severability  
526.7005 Supply Inventory  
526.7010 University Furnished Property  
526.7015 Inspections  
526.7020 Record Retention  
526.7030 No Waiver of Sovereign Immunity

AUTHORITY: Public Act 90-572 [30 ILCS 500]

SOURCE: New Part adopted by emergency rulemaking at 22 Ill. Reg. 13905, effective July 1, 1998, for a maximum of 150 days; adopted at 22 Ill. Reg. 20964, effective NOV 20 1998.

## SUBPART A: GENERAL

## Section 526.01 Title

This Part may be cited as the Higher Education Procurement Rules.

## Section 526.03 Authority

This Part is promulgated by the Chief Procurement Officer for Public Institutions of Higher Education and the following higher education governing Boards of the State of Illinois: the Board of Trustees of the University of Illinois, the Board of Trustees of Southern Illinois University, the Board of Trustees of Eastern Illinois University, the Board of Trustees of Western Illinois University, the Board of Trustees of Governors State University, the Board of Trustees of Northeastern Illinois University, the Board of Trustees of Chicago State University, the Board of Trustees of Northern Illinois University and the Board of Trustees of Illinois State University (hereinafter sometimes referred to individually as "University," "State University," or "Public

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University" and collectively as "Universities," "State Universities," or "Public Universities") in accordance with the provisions of the Illinois Procurement Code (the Code) [30 ILCS 500]. This Part may be amended in accordance with the Code and the Illinois Administrative Procedure Act [5 ILCS 100].

## Section 526.05 Policy

The principles of competitive bidding and economical procurement practices shall apply to all purchases and contracts by or for the Universities, except as otherwise provided by law, this Part and other applicable rules.

## Section 526.08 Implementation of This Part

For the purposes of this Part, any reference to Chief Procurement Officer or CPO means the Chief Procurement Officer for public institutions of higher education as defined in Section 1-15.15 of the Code unless the context indicates otherwise. Implementation by and within the Universities shall be consistent with this Part. Operational interpretations are to be made in a flexible manner designed to secure the Universities' needs and protect the Universities' interests.

## Section 526.10 Application

- a) The Code and this Part apply to those procurements for which the vendors were first solicited on or after July 1, 1998.
- b) Procurements for which vendors were first solicited on or before June 30, 1998, shall be conducted pursuant to legal requirements in effect at the time of the solicitation. The terms and conditions and the rights and obligations under contracts resulting from such procurements shall not be impaired.
- c) A solicitation occurs on or before June 30, 1998, as follows:
  - 1) When advertising was required in the Official State Newspaper, the first advertisement must have run no later than June 30, 1998.
  - 2) When advertising was not required:
    - A) if the procurement was advertised, even though advertising was not required, the first advertisement must have run no later than June 30, 1998;
    - B) if the procurement was by direct solicitation by mail, the solicitation must have been postmarked or placed in the control of a private carrier no later than June 30, 1998;
    - C) if the procurement was by direct solicitation by facsimile transmission, the facsimile transmission must show a transmission date no later than June 30, 1998;
    - D) if the procurement was solicited in-person or by telephone, the solicitation must have occurred no later than June 30, 1998, and the University officer or employee who made the



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solicitation must state in writing when the procurement was discussed, and must name the party with whom the discussion took place.

- 3) In all circumstances, the solicitations must be for the procurement of particular needs. A general discussion to determine if there is any interest on the part of a University in the supplies or services of a vendor or vendors, or on the part of a vendor or vendors in providing the supplies or services, is not considered a solicitation.

- d) The Code and this Part do not apply to:
  - 1) contracts between the State and its political subdivisions or other governments, or between State governmental bodies except as specifically provided in this Code (for purposes of this subsection (d)(1), "governmental bodies" includes the State Universities and their governing boards);
  - 2) grants;
  - 3) purchase of care;
  - 4) hiring of an individual as employee and not as an independent contractor, whether pursuant to an employment code or policy or by contract directly with that individual;
  - 5) collective bargaining contracts;
  - 6) purchase of real estate; or
  - 7) contracts necessary to prepare for anticipated litigation, enforcement actions, or investigations, provided that the contracts are approved by the chief legal counsel to the University, or his or her designee, as provided in Section 1-10(b)(7) of the Code. Anticipated litigation is that which a University may prosecute or defend before a court or administrative body and actions necessary to prepare for and conduct the effective legal prosecution or defense of litigation, including, but not limited to, the retention of counsel, investigators, expert witnesses and court reporters.

## Section 526.15 Definition of Terms Used in This Part

As used throughout this Part, terms defined in the Illinois Procurement Code shall have the same meaning as in the Code and as further defined below, and each term listed in this Section shall have the meaning set forth below unless its use clearly requires a different meaning. Terms may be defined in particular Sections for use in that Section.

"Bid" - The response to an Invitation for Bids.

"Bidder" - Any person who submits a bid.

"Brand Name or Equal Specification" - A specification that uses one or more manufacturers' names or catalogue numbers to describe the standard of quality, performance and other characteristics needed to

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meet University requirements, and that allows the submission of equivalent products.

"Brand Name Specification" - A specification limited to one or more items by manufacturers' names or catalogue numbers.

"Code" - The Illinois Procurement Code [30 ILCS 500].

"Contract" - The term contract as used in the Code and this Part does not include: supplies or services the terms governing which are established by tariff of the Illinois Commerce Commission or the Federal Communications Commission, bonds or contracts relating to bonds issued by or on behalf of a State agency when the contractor or vendor is neither selected nor paid by the State agency.

"Contractor or Vendor" - The terms contractor and vendor are used interchangeably for the purposes of the Code and this Part.

"Day" - Calendar day. In computing any period of time, the day of the event from which the designated period of time begins to run shall not be included, but the last day of the period shall be included unless it is a Saturday, Sunday, or a University holiday, in which event the period shall run to the end of the next business day.

"Invitation for Bids" or "IFB" - The process by which a University requests information from bidders, including all documents, whether attached or incorporated by reference, used for soliciting bids. [30 ILCS 500/1-15.45]

"Items" - Anything that may be procured under this Code.

"Procurement Officer" - The Chief Procurement Officer (CPO) or appropriate State Purchasing Officer (SPO) who conducts the particular procurement, or a designee of either.

"Proposal" - The response to a Request for Proposals.

"Purchase of Care" - A contract with a person for the furnishing of medical, educational, psychiatric, vocational, rehabilitation, social, or human services directly to a recipient of a State aid program [30 ILCS 500/1-15.68] or including a recipient of services from a University medical, educational, psychiatric, vocational, rehabilitation, social, or human services program. Purchase of care includes services provided or arranged to be provided by a vendor in conjunction with the purchase of care. Such services may include administrative and management services, enrollment, health education, grievance procedures, case management, utilization review, quality assurance, peer review, or marketing. Recipient of a State aid

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program includes applicants for a State aid program.

"Qualified Products List" - An approved list of supplies, services, or construction items described by model or catalogue numbers that, prior to competitive solicitation, the University has determined will meet the applicable specification requirements.

"Request for Proposals" or "RFP" - *The process by which a purchasing agency requests information from offerors, including all documents, whether attached or incorporated by reference, used for soliciting proposals.* [30 ILCS 500/1-15.75]

"Responsible" - In the context of procurement procedures, the apparent ability to undertake and complete successfully the requirements of a contract.

"Responsive" - In the context of procurement procedures, the compliance in all meaningful, material respects with the procurement solicitation.

"Services" - The furnishing of labor, time, or effort by a contractor, not involving the delivery of a specific end product other than reports or supplies that are incidental to the required performance.

"Specification" - Any description of the physical, functional, or performance characteristics, or of the nature of a supply or service. A specification includes, as appropriate, requirements for inspecting, testing, or preparing a supply or service item for delivery. Unless the context requires otherwise, the terms "specification" and "purchase description" are used interchangeably throughout this Part.

"Specification for a Common or General Use Item" - A specification that has been developed and approved for repeated use in procurements.

"Supplies" - *All personal property, including, but not limited to, equipment, materials, printing and insurance and the financing of those supplies.* [30 ILCS 500/1-15.110]

"Unsolicited Offer" - Any offer other than one submitted in response to a solicitation.

## Section 526.25 Property Rights

Receipt of an Invitation for Bids or other procurement document, or submission of any response thereto or other offer, confers no right to receive an award or contract, nor does it obligate a University in any manner.

## SUBPART B: PROCUREMENT RULES

## CHIEF PROCUREMENT OFFICER FOR PUBLIC INSTITUTIONS OF HIGHER EDUCATION

## NOTICE OF ADOPTED RULES

## Section 526.525 Rules

- a) Procurement shall be conducted in accordance with the Code and this Part except as provided in this Section.
- b) A University may propose changes to this Part for consideration by the Universities and the CPO. Changes agreed upon by the Universities and approved by the CPO will be proposed by the CPO in a rulemaking under the Administrative Procedure Act.
- c) All proposed rules will be submitted to the Procurement Policy Board (Board) before or during the public comment period established under the Administrative Procedure Act. Rulemaking, except for emergency rulemaking, shall be scheduled so as to allow the Board at least 30 days to provide comments.
- d) Emergency rules will be submitted to the Board for review and comment with as much notice as is reasonably possible. A copy of the adopted emergency rules shall be provided to the Board. The Board shall be given opportunity to comment on rules proposed to replace the emergency rules.

## SUBPART C: PROCUREMENT AUTHORITY

## Section 526.1005 Procurement Authority of State Purchasing Officers

The State Purchasing Officers (SPOs) appointed under Section 526.1010 shall exercise the procurement authority created by the Code for their respective Universities except as otherwise provided by the Code. Each SPO shall have authority to make procurements for the use of his or her employing University in accordance with the Code, this Part and the policies and procedures of the University. An SPO may appoint designees to assist in the performance of the duties and responsibilities of SPO. When an SPO activity is mentioned in a rule, the activity may be conducted by an SPO or a designee of an SPO unless the rule states that the authority to conduct such activity may not be delegated to an SPO designee.

## Section 526.1010 Appointment of State Purchasing Officers

The executive head of each University shall recommend to the CPO one or more of the University's employees for appointment as a State Purchasing Officer (SPO). Upon appointment of the recommended employee or employees by the CPO, each named employee shall be an SPO for the University. In the absence of any appointed SPO, the CPO may exercise the procurement authority of an SPO on behalf of the University.

## Section 526.1011 Procurement Authority of the CPO

The CPO shall have the procurement authority set forth in the Code. The CPO may appoint designees, including designees within the individual Universities, to assist in the performance of the duties and responsibilities of the CPO.

## CHIEF PROCUREMENT OFFICER FOR PUBLIC INSTITUTIONS OF HIGHER EDUCATION

## NOTICE OF ADOPTED RULES

When a CPO activity is mentioned in a rule, the activity may be conducted by the CPO or a designee of the CPO unless the rule states that the authority to conduct such activity may not be delegated to a CPO designee. CPO designees are not authorized to appoint subdesignees.

**Section 526.1030 Other Procurement Authority of the Universities**

- a) Each University under the authority of the CPO retains for itself the authority to make procurements under the jurisdiction of the Capital Development Board, the Illinois Department of Transportation and the Department of Central Management Services in accordance with the Code, the rules adopted by those agencies, and other applicable statutes and rules governing such procurements.
- b) Each University retains for itself the authority to make procurements that are exempt from the application of the Code.

**Section 526.1080 Illinois Mathematics and Science Academy**

As authorized in 44 Ill. Adm. Code 1.1080, the Illinois Mathematics and Science Academy and its SPO may procure supplies and services for the operation of the Academy through the CPO for Higher Education. All such procurement for the Academy shall be made in accordance with the requirements of this Part 526.

**SUBPART D: PUBLICIZING PROCUREMENT ACTIONS****Section 526.1501 Higher Education Volume of Illinois Procurement Bulletin**

The Higher Education Volume of the Illinois Procurement Bulletin (Higher Education Bulletin) will contain procurement information relating to procurements under the responsibility of the CPO for public institutions of higher education.

**Section 526.1510 Publication of Higher Education Bulletin**

The Higher Education Bulletin will be published electronically and will be updated at least once per month and may be updated as frequently as daily. In the event a fee is charged for subscriptions to the Higher Education Bulletin, free access to the information published in the Higher Education Bulletin will be made available at public libraries or other sites open to the general public. The Higher Education Bulletin will also provide users with information on accessing the other volumes of the Illinois Procurement Bulletin.

**Section 526.1525 Bulletin Content**

- a) Invitations for Bid
  - 1) Notice of each procurement request governed by the Code that must be conducted by competitive sealed bidding, including multi-step sealed bidding, competitive sealed proposals, or competitive selection

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procedures, shall be placed in the Bulletin in accordance with Section 15-25(a) of the Code.

- b) Contracts Let or Awarded
  - 1) Notice of each contract awarded that was subject to a notice in subsection (a) shall be placed in the Bulletin in accordance with Section 15-25(b) of the Code.
- c) Emergency Procurement
  - 1) Information regarding emergency procurements shall be published in the Bulletin in accordance with Section 15-25(c) and 20-30 of the Code and Section 526.2030(f)(3) of this Part.
- d) Sole Source Procurements
  - 1) Information regarding sole source procurements shall be published in the Bulletin in accordance with Section 20-25 of the Code and Section 526.2025 of this Part.

**Section 526.1545 Supplemental Notice**

Universities may place advertisements in the Official State Newspaper selected by the Department of Central Management Services or other publications to supplement notice in the Higher Education Bulletin. Upon direction of the CPO, the Official State Newspaper may be used as a substitute for the hardcopy of the Bulletin in the event the hardcopy cannot be published.

**Section 526.1550 Error in Notice**

When a required publication contains an error, the error may be corrected by a single notice published in the Higher Education Bulletin.

**Section 526.1580 Direct Solicitation**

In addition to giving notice in the Bulletin, the Universities may directly contact prospective vendors by providing copies of Invitations for Bids, Requests for Proposals, or other procurement information. Direct solicitation may be oral or in writing, but care should be taken to ensure that all vendors solicited in this manner receive the same information as provided to others.

**SUBPART E: SOURCE SELECTION AND CONTRACT FORMATION****Section 526.2005 General Provisions**

- a) Late Bids or Proposals, Late Withdrawals and Late Modifications
  - 1) Definition. Any bid or proposal received after the time and date for receipt, or at other than the specified location even if on time, is late. Any withdrawal or modification of a bid or proposal received after the time and date set for opening of bids or proposals is late.
  - 2) Treatment. No late bid or proposal will be considered. It is the responsibility of the bidder or offeror to see that the bid



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or proposal is delivered at the time and place specified. All bids or proposals received after the specified time will be marked "received too late for consideration", signed by the SPO and returned unopened. Late modifications and late withdrawals will be treated as set forth in Section 526.2038.

- 3) Records. Records shall be made and, in accordance with the State Records Act [5 ILCS 160], kept for each late bid or proposal, late modification, or late withdrawal.
- 4) Other Submissions. Any other submission that has a time or date deadline shall be treated in the same manner as a late bid.
  - b) Extension of Time
    - 1) The SPO may, prior to the date or time for submitting or modifying a bid or proposal, extend the date or time for the convenience of the University.
    - 2) After opening bids or proposals, the SPO may request bidders or offerors to extend the time during which the University may accept the bids or proposals, provided that, with regard to bids, no other change is permitted.
  - c) Electronic and Facsimile Submissions
    - 1) The Invitation for Bids or Request for Proposals may state that electronic and facsimile machine submissions will be considered if they are received at the designated office by the time and date set for receipt. Any required attachments will be submitted as stated in the IFB or RFP.
    - 2) Electronic submissions authorized by specific language in the IFB or RFP will be opened in accordance with electronic security measures in effect at the University at the time of opening. Unless the electronic submission procedures provide for a secure receipt, vendor assumes risk of premature disclosure due to submission in unsealed form.
    - 3) Facsimile submissions authorized by specific language in the IFB or RFP will be placed in a sealed container upon receipt and opened as other submissions. Vendor assumes risk of premature disclosure due to submission in unsealed form.
  - d) Only One Bid or Proposal Received
 

If only one bid or proposal is received, an award may be made to the single bidder or offeror if the SPO finds that the price submitted is fair and reasonable, and that either other prospective bidders had reasonable opportunity to respond or there is not adequate time for resolicitation. Otherwise:

    - 1) new bids or offers may be solicited, including under sole source (Section 526.2025) or emergency (Section 526.2030) procedures; or
    - 2) the procurement may be canceled.
  - e) Alternate or Multiple Bids or Proposals
    - 1) Alternate bids or proposals may be accepted if:
      - A) permitted by the solicitation and in accordance with instructions in the solicitation; or
      - B) only one vendor responded, in which case the alternate

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submissions may be evaluated and treated in accordance with Section 526.2025 (Sole Economically Feasible Source Procurement) of this Part; or

- C) the low bidder, who has met all requirements of the solicitation, has provided a lower cost alternative that meets all of the material requirements of the specifications.
- 2) Multiple bids or proposals may be accepted if:
  - A) permitted by the solicitation and submitted in accordance with instructions in the solicitation; or
  - B) only one vendor responded, then, one or more of the submissions may be evaluated, provided that, in the case of bids, only the lowest cost bid meeting specifications may be considered.
- f) Multiple Items
 

An Invitation for Bids or Request for Proposals may call for pricing of multiple items of similar or related type with award based on individual line item, group total of certain items, a "market basket" of items representative of the total requirement, or grand total of all items.
- g) All or None Bids or Proposals
 

All or none bids or proposals may be accepted if the evaluation shows an all or none award to be the lowest cost or best value of those submitted.
- h) Conditioning Bids or Proposals Upon Other Awards
 

Any bid or proposal that is conditioned upon receiving award of the particular contract being solicited and one or more other State contracts shall:

  - 1) be rejected unless the vendor removes the condition; or
  - 2) be evaluated and award made to that vendor if the vendor is also independently evaluated as the winner of the other IFB's or RFP's provided the University need not delay procurement actions to accommodate the vendor's all or none condition.
- i) Unsolicited Offers
  - 1) Processing of Unsolicited Offers. The SPO may consider unsolicited offers.
  - 2) Conditions for Consideration. An unsolicited offer must be in writing and must be sufficiently detailed to allow a judgment to be made concerning the potential utility of the offer to the University.
  - 3) Award. An award may not be made based on an unsolicited offer in place of the notice and competition requirements of the Code and this Part except if that unsolicited offer meets the requirements for a small (Section 526.2020), sole source (Section 526.2025), or emergency (Section 526.2030) procurement.
- j) Clarification of Bids and Proposals
 

The SPO may request that a vendor clarify its bid or proposal as a part of the evaluation process. A vendor shall not be allowed to

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materially change its bid or proposal in response to a request for clarification. A clarification is not an opportunity for discussion or for submission of best and final offers as authorized elsewhere in this Part.

## k) Supplementary Purchases

1) For procurements other than for construction or construction-related professional services, supplementary purchases will be permitted under the following conditions:

When the University issues an award after following the sealed bid or sealed proposal procedure, it may, at any time within 90 days thereafter, issue additional purchase orders or contracts to the same contractor or amendments to the original purchase order or contract for an additional quantity at the same unit price and on the same terms and conditions, if:

- A) The contractor indicates that the additional purchase orders or contracts will be accepted if issued.
  - B) The market price of the commodities, services, or equipment in question has not gone down since the original purchase.
  - C) The amount of the additional purchases is not of such magnitude as to constitute a substantial or material variation from the first purchase order or contract.
- 2) Notices of supplementary purchases in excess of the small purchase limits of Sections 20-20 and 35-35 of the Code shall be published in the next available Higher Education Bulletin.
- 3) Supplementary purchases of construction or construction related professional services will be permitted as provided in Section 526.3005(e).

## 1) Novation or Change of Name

1) Assignment. No University contract is transferable, or otherwise assignable, without the prior written consent of the SPO. Assignment may require the execution of a contract with the assignee and in such cases the assignee must meet all requirements for contracting with the University. Any purported assignment without prior written consent shall be null and void.

2) Change of Name. A vendor may submit to the SPO a written request to change the name in which it holds a contract with the University. The name change shall not alter any of the terms and conditions of the contract or the obligations of the vendor.

m) Contracting for Installment Purchase Payments, Including Interest. Contracts may provide for installment purchase payments, including interest charges, over a period of time. The interest rate may not exceed that established by law, including the Bond Authorization Act [30 ILCS 305].

## n) Use of Source Selection Method that is Not Required

If a University uses a method of source selection that it is not, by law, required to use (e.g., use of a competitive sealed bid for a small purchase), the University is not bound to strict compliance with the Code and rules governing the method of source selection used.

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- o) Stringing. Dividing or planning procurements to avoid use of competitive procedures (stringing) is prohibited. Periodic purchases of similar merchandise from several different manufacturers to maintain inventory for resale in a University retail operation is not stringing unless such purchases are planned to avoid use of competitive procedures.

## p) Confidential Data

Vendors must clearly identify any information that is exempt from the disclosure requirement of the Illinois Freedom of Information Act [5 ILCS 140] and must request special handling of that material.

## Section 526.2010 Competitive Sealed Bidding

## a) Application

Competitive sealed bidding is the required method of source selection except as allowed by the Code and this Part. The provisions of this Section apply to every procurement required to be conducted by competitive sealed bidding.

## b) Invitation for Bids

- 1) Use. An Invitation for Bids is used to initiate a competitive sealed bid procurement.
- 2) Content. An Invitation for Bids shall include, at a minimum, the following:
  - A) instructions and information to bidders concerning the bid submission requirements, including the time and date set for receipt of bids, the address of the office to which bids are to be delivered and the maximum time for bid acceptance by the University;
  - B) the purchase description, evaluation factors, delivery or performance schedule and such inspection and acceptance requirements as are not included in the purchase description; and
  - C) the contract terms and conditions, including warranty and bonding or other security requirements, as applicable.

- 3) Incorporation by Reference. An Invitation for Bids may incorporate documents by reference provided that the Invitation for Bids specifies where such documents can be obtained.

## c) Bidding Time

Bidding time is the period of time between the date of notice or distribution of the Invitation for Bids and the time and date set for receipt of bids. In each case, bidding time will be set to provide bidders a reasonable time to prepare their bids. A minimum of 14 days shall be provided unless a shorter time is authorized by the Code or this Part.

## d) Bidder Submissions

- 1) Bid Form. An Invitation for Bids may include a form or format for submitting bids. If a form or format is specified, vendor shall submit bids as instructed.

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2) Special envelope for sealed bids. A special envelope may be furnished for return of a sealed bid. If a special envelope is used, such envelope containing the bid will show the following information on the outside:

- A) Address to which the bid is to be mailed or delivered.
- B) Date and time of the bid opening.
- C) Requisition or bid number or other project identification.
- D) Complete name and address of bidder.

## e) Contents of Bids

1) Period of firm bid. Unless otherwise provided in bid information, the price of each bid must be kept firm for at least 60 days after the bid opening date. A bidder may specify the price will remain firm for a longer period than required by the bid information or this Part. If the bidder has not specified an expiration date for the price, the price will continue to remain firm until the bidder gives notice of intent to terminate the price. After such notice, the University will have 10 days to accept the bid at the original bid price.

2) Maintenance and repair service. If the bid information specifies that maintenance or repair service must be provided by the successful bidder, each bidder will specify in the bid whether the service will be provided by the bidder or through an arrangement with another identified person or firm.

3) Contract pricing. The bid information should define whether prices cover transportation, transit insurance, delivery, installation, and any other costs.

4) Taxes, licenses, assessments and royalties.

A) The contractor shall pay all current and applicable city, county, State and federal taxes, licenses or assessments, including federal excise taxes, due on the performance of the contract, including, without thereby limiting the foregoing, those required by the Federal Insurance Contribution Act and the Federal and State Unemployment Tax Acts, together with all royalties due for any proprietary items. The contractor is exclusively liable for the payment of taxes to the respective governments. In the event said taxes, licenses, assessments or royalties, or any part thereof, are in the first instance charged to the University, the contractor shall, upon timely demand of the University, pay the University the amount thereof, plus all penalties that may have accrued thereon.

B) The University is exempted by Section 3 of the Use Tax Act [35 ILCS 105/3] from paying any of the taxes imposed by that Act, and sales to the University are exempt by Section 2 of the Retailers' Occupation Tax Act [35 ILCS 120/2] from any of the taxes imposed by that Act. The Department of Revenue of the State of Illinois under Rule No. 15, issued August 9, 1961, has declared that sales of materials to construction

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contractors for conversion into real estate for schools or charities are not taxable retail sales. The SPO will furnish the vendor with an exemption certification statement upon request.

C) Federal excise tax. Bidders must not include in their prices any allowance for payment of federal excise tax, if the University is exempt from such taxes. If an order or contract is awarded for the purchase of an item that is subject to federal excise tax, the SPO will furnish the vendor with an exemption certificate upon request.

5) Federally financed purchases. For purchases financed in whole or in part by United States Government funds, the contractor and each subcontractor shall comply with all applicable federal statutes and regulations.

6) Bid Samples and Descriptive Literature.

A) Bid samples or descriptive literature may be required when it is necessary to evaluate required characteristics of the items bid.

B) Unsolicited bid samples or descriptive literature are submitted at the bidder's risk, may not be examined or tested, will not be deemed to vary any of the provisions of the Invitation for Bids and may not be utilized by the vendor to contest a decision or understanding with the University.

## f) Public Notice

1) Publication. Every procurement for supplies and services that must be procured using an Invitation for Bids shall be publicized in the Higher Education Bulletin at least 14 days before the date set for bid opening (see Section 526.1510).

2) Public Availability. A copy of the Invitation for Bids shall be made available for public inspection.

3) Distribution. Invitations for Bids or Notices of the Availability of Invitations for Bids may be mailed or otherwise furnished to a sufficient number of bidders for the purpose of securing competition. Notices of Availability shall, at a minimum, indicate where Invitations for Bids may be obtained, generally describe what is needed and indicate the due date for bids. Where appropriate, the SPO may require payment of a fee or a deposit for supplying the Invitation for Bids.

## g) Pre-Bid Conference

A pre-bid conference may be conducted to enhance understanding of the procurement requirements. The pre-bid conference shall be announced as a part of the Invitation for Bids notice. The conference may be designated as "attendance mandatory" or "attendance optional". The conference should be held long enough after the Invitation for Bids has been issued to allow bidders to become familiar with it, but sufficiently before bid opening to allow consideration of the conference results in preparing their bids. Nothing stated at



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pre-bid conference shall change the Invitation for Bids unless a change is made by written modification to the Invitation for Bids. Amendments shall be supplied to all those prospective bidders known to have received an Invitation for Bids. If the conference is mandatory, the amendment shall be supplied to attendees only.

## h) Amendments to Invitations for Bids

- 1) Form. Amendments to Invitations for Bids shall be clearly identified and shall reference the portion of the IFB they amend.
- 2) Distribution. Except as provided in subsection (g) of this Section, amendments shall be made available to all prospective bidders known to have received an Invitation for Bids.
- 3) Timeliness. Amendments shall be made available within a reasonable time to allow prospective bidders to consider them in preparing their bids. If the time and date set for receipt of bids will not permit such preparation, the amendment shall extend the response time. If necessary, the response time may be extended by facsimile transmission or telephone and confirmed in the amendment.

## i) Pre-Opening Modification or Withdrawal of Bids

- 1) Procedure. Bids may be modified or withdrawn by written notice received in the office designated in the Invitation for Bids prior to the time and date set for bid opening.
- 2) Disposition of Bid Security. If a bid is withdrawn in accordance with this Section, the bid security, if any, shall be returned to the bidder.

- 3) Records. All documents relating to the modification or withdrawal of bids shall be made a part of the appropriate procurement file.

## j) Receipt, Opening and Recording of Bids

- 1) Receipt. Upon its receipt, each bid and modification shall be date- and time-stamped but not opened and shall be stored in a secure place until the time and date set for bid opening. If a bid is opened in error, the file shall so state.
- 2) Opening and Recording.

A) Bids and modifications shall be opened publicly at the time, date and place designated in the Invitation for Bids. Opening shall be witnessed by a University employee or any other person present, but the person opening bids shall not serve as witness. The name of each bidder, the bid price and such other information as is deemed appropriate by the SPO, shall be recorded and the name of each bidder read aloud or otherwise made available. The name of the witness shall also be recorded at the opening.

B) The winning bid shall be available for public inspection after award, along with the record of each unsuccessful bid.

## k) Bid Evaluation and Award

- 1) General. The contract is to be awarded to the lowest responsible and responsive bidder whose bid meets the requirements and

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criteria set forth in the Invitation for Bids, except as permitted in the Code and this Part. The Invitation for Bids shall set forth the requirements and criteria that will be used to determine the lowest responsive bidder.

- 2) Responsibility. Responsibility of prospective vendors is covered by Section 526.2046 (Responsibility) of this Part.

- 3) Responsiveness. A bid must conform in all material respects to the Invitation for Bids.

A) Product or Service Acceptability. The Invitation for Bids shall set forth any evaluation criteria to be used in determining product or service acceptability. It may require the submission of bid samples, descriptive literature, technical data, references, licenses, or other information or material. It may also provide for accomplishing any of the following prior to award:

- i) inspection or testing of a product or service prior to award for such characteristics as quality or workmanship;
- ii) examination of such elements as appearance, finish, taste, or feel;
- iii) other examinations to determine whether it conforms with any other purchase description requirements.

B) The acceptability evaluation is not conducted for the purpose of determining whether one bidder's product or service capability is superior to another, but only to determine that a bidder's offering is acceptable as set forth in the Invitation for Bids. Any bidder's offering that does not meet the acceptability requirements shall be rejected.

- 4) Determination of Lowest Bidder. Following determination of product or service acceptability as set forth in this subsection (k), bids will be evaluated to determine which bidder offers the lowest cost to the University in accordance with the evaluation criteria set forth in the Invitation for Bids. Examples of such criteria include, but are not limited to, transportation cost, administrative cost and ownership or life-cycle cost formulas. Evaluation factors need not be precise predictors of actual future costs, but to the extent possible such evaluation factors shall be reasonable estimates based upon information the University has available concerning future use and shall treat all bids equitably.

- 5) Price Negotiation. Negotiations are permitted with the low bidder to obtain a lower price for the item bid.

- 1) Documentation of Award  
Following award, a record showing the successful bidder shall be made a part of the procurement file.

- m) Award to Other Than Low Bidder  
The SPO, but not a designee, may award to other than the lowest

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responsible and responsive bidder upon a written determination that award to another bidder is in the University's best interest. The name of the bidder selected, pricing and the reasons for selecting this bidder instead of the low bidder must be published in the Bulletin.

## n) Publicizing Award

The successful bidder shall be notified of award and such notification may be in the form of a letter, purchase order, or other clear communication. In procurements over the small purchase limit set in Section 526.2020 (Small Purchases) of this Part, notice of award shall be published in the next available Bulletin. If the contract is awarded to other than the lowest bidder, the notice shall include an explanation of the award.

## Section 526.2012 Multi-Step Sealed Bidding

When it is considered impracticable to initially prepare a purchase description to support an award based on price, an Invitation for Bids may be issued requesting the submission of unpriced offers to be followed by an Invitation for Bids limited to those bidders whose offers have been qualified under the criteria set forth in the first solicitation.

## Section 526.2015 Competitive Sealed Proposals

a) Competitive Sealed Proposals may be used whenever permitted by the Code and as described in this Part.

b) The Competitive Sealed Proposal method of source selection may be used to procure the following categories:

- 1) electronic data processing equipment, software and services;
- 2) telecommunications equipment, software and services;
- 3) consulting services;
- 4) employee benefits and management of those benefits;
- 5) insurance and banking services; and
- 6) public utility services not subject to tariff.

c) Competitive Sealed Proposals may be used on a case-by-case basis when it is determined by the SPO that competitive sealed bidding is either not practicable or advantageous.

- 1) "Practicable" Distinguished From "Advantageous." As used in Section 20-15 (Competitive Sealed Proposals) of the Illinois Procurement Code and in this Section, "practicable" denotes what may be accomplished or put into practical application, and "advantageous" connotes a judgmental assessment of what is in the University's best interest. Competitive sealed bidding may be practicable, that is, reasonably possible, but not necessarily advantageous, that is, in the University's best interest. Before a procurement may be conducted by Competitive Sealed Proposals, the SPO shall determine in writing that competitive sealed bidding is either not practicable or not advantageous to the

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University.

## 2) General Discussion.

- A) If competitive sealed bidding is not practicable or is not advantageous, Competitive Sealed Proposals should be used.
- B) The key element in determining whether use of a proposal is advantageous is the need for flexibility. The Competitive Sealed Proposal method differs from competitive sealed bidding in two important ways:
  - i) it permits discussions with competing offerors and changes in their proposals, including price; and
  - ii) it allows comparative judgmental evaluations to be made when selecting among acceptable proposals for award of the contract.

C) Where evaluation factors involve the relative abilities of offerors to perform, including degrees of experience or expertise, where the types of supplies or services may require the use of comparative, judgmental evaluations to evaluate them adequately, or where the type of need to be satisfied involves weighing aesthetic values to the extent that price is a secondary consideration, use of competitive sealed proposals is the appropriate procurement method.

## 3) When Competitive Sealed Bidding Is Not Practicable.

Competitive sealed bidding is not practicable unless the nature of the procurement permits award to a low bidder who agrees by its bid to perform without condition or reservation in accordance with the purchase description, delivery or performance schedule and all other terms and conditions of the Invitation for Bids. Factors to be considered in determining whether competitive sealed bidding is not practicable include:

- A) whether the contract needs to be other than a fixed-price type;
  - B) whether oral or written discussions may need to be conducted with offerors concerning technical and price aspects of their proposals;
  - C) whether offerors may need to be afforded the opportunity to revise their proposals, including price;
  - D) whether award may need to be based upon a comparative evaluation, as stated in the Request for Proposals, of differing price, quality and contractual factors in order to determine the most advantageous offering to the University. Quality factors include technical and performance capability and the content of the technical proposal; and
  - E) whether the primary consideration in determining award may not be price.
- 4) When Competitive Sealed Bidding Is Not Advantageous.
- A determination may be made to use Competitive Sealed Proposals if it is determined that it is not advantageous to the University, even though practicable, to use competitive sealed

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bidding. Factors to be considered in determining whether competitive sealed bidding is not advantageous include:

A) if prior procurements indicate that competitive sealed proposals may result in more beneficial contracts for the University; and

B) whether the factors listed in subsection (c)(3) of this Section are desirable, in conducting a procurement, rather than necessary; if they are, then such factors may be used to support a determination that competitive sealed bidding is not advantageous.

## d) Content of the Request for Proposals

The Request for Proposals shall be prepared in accordance with Section 526.2010 (Competitive Sealed Bidding), provided that it shall also include:

1) a statement that discussions may be conducted with offerors who submit proposals determined to be reasonably susceptible of being selected for award, but that proposals may be accepted without such discussions; and

2) a statement of when and how price should be submitted.

## e) Receipt and Registration of Proposals

1) Proposals and modifications shall be opened publicly at the time, date and place designated in the Request for Proposals. Opening shall be witnessed by a University employee or by any other person present but the person opening proposals shall not serve as witness. A record shall be prepared that shall include

the name of each offeror, the number of modifications received, if any, and a description sufficient to identify the supply or service item offered. The record of proposals shall be open to public inspection after award of the contract.

2) Proposals and modifications shall be opened in a manner to avoid disclosing contents to competitors. Only University personnel and contractual agents may review the proposals prior to award.

## f) Evaluation of Proposals

1) Evaluation Factors in the Request for Proposals. The Request for Proposals shall state all of the evaluation factors, including price, and their relative importance.

2) Evaluation. The evaluation shall be based on the evaluation factors set forth in the Request for Proposals. Numerical rating systems may be used but are not required.

## g) Proposal Discussions with Individual Offerors

1) Purposes of Discussions. Discussions are held to:

A) promote understanding of the University's requirements and the offerors' proposals; and

B) facilitate arriving at a contract that will be most advantageous to the University, taking into consideration price and the other evaluation factors set forth in the Request for Proposals.

2) Conduct of Discussions. Offerors shall be accorded fair and

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equal treatment with respect to any opportunity for discussions and revisions of proposals. If during discussions there is a need for any substantial clarification of, or change to, the Request for Proposals, the Request shall be amended to incorporate such clarification or change. Auction techniques (revealing one offeror's price to another) and disclosure of any information from competing proposals are prohibited. Any substantial oral clarification of a proposal shall be reduced to writing by the offeror.

3) Best and Final Offers. The SPO may request best and final offers from those offerors deemed acceptable after completion of any discussions. Best and final offers shall be submitted by a specified date and time. The SPO may conduct additional discussions or change the University's requirements and require another submission of best and final offers. The scope of the best and final offer and the number of vendors allowed to participate shall be defined by the SPO. If an offeror does not submit either a notice of withdrawal or another best and final offer, that offeror's immediately previous offer will be construed as its best and final offer.

## h) Award

An award shall be made by the SPO pursuant to a written determination showing the basis on which the award was found to be most advantageous to the University, based on the factors set forth in the Request for Proposals.

## i) Publicizing Awards

The successful offeror shall be notified of award and such notification may be in the form of a letter, purchase order, or other clear communication. Notices of contracts awarded through the Sealed Proposal process shall be published in the next available Higher Education Bulletin.

j) When the SPO does not have sufficient information about available supplies or services to issue a Request for Proposals, the SPO may issue a Pre-solicitation Request for Information inviting vendors to submit non-price information about the availability of specified types of supplies or services. Public notice of the Pre-solicitation Request for Information shall be published in the Higher Education Bulletin at least 14 days before the date set for the receipt of information. The submission of information by a vendor in response to a Pre-solicitation Request for Information is not a prerequisite for that vendor to respond to a subsequent IFB or Request for Proposals for the types of supplies or services for which information was solicited, and the issuance of a Pre-solicitation Request for Information does not commit the University to make any procurement of supplies or services of any kind. Confidential information will not be accepted from a vendor in response to a Pre-solicitation Request for Information.



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## Section 526.2020 Small Purchases

## a) Application

- 1) Individual procurements of \$25,000 or less for supplies or services (including printing), other than professional and artistic, and \$30,000 or less for construction, may be made using the method of source selection determined by the SPO to be most appropriate to the circumstances.
- 2) Procurements of less than \$20,000 for professional and artistic services and that have a non-renewable term of one year or less may be made using the method of source selection determined by the SPO to be most appropriate to the circumstances.
- 3) The CPO shall announce any change identified by the United States Department of Labor in the Consumer Price Index for All Urban Consumers for the period ending December 31, 1998, and for each year thereafter. That percentage change shall be used to calculate the small purchase maximums that shall be applicable for the fiscal year beginning July 1, 1999. The small purchase maximums shall be likewise recalculated for each July 1 thereafter.

b) In determining whether a contract is under the limit, the stated value of the supplies or services, plus any optional supplies and services, determined in good faith, shall be utilized. Where the value is calculated month-to-month or in a similar fashion, the amount shall be calculated for a twelve month period.

- c) If only a unit price or hourly rate is known, the contract shall be considered small if it has a not-to-exceed limit applicable to the type of procurement (see subsection (a) above).
- d) Procurement requirements shall not be artificially divided to avoid using the other source selection methods set forth in Section 20-5 of the Illinois Procurement Code.
- e) If there is a repetitive need for small procurements of the same type, the University should consider issuing a competitive sealed bid or proposal for procurement of those needs.

## Section 526.2025 Sole Economically Feasible Source Procurement

## a) Application

The provisions of this Part apply to procurement from a sole economically feasible source (referred to as sole source) unless the estimated amount of the procurement is within the limit set in Section 526.2020 (Small Purchases) or unless emergency conditions exist as defined in Section 526.2030 (Emergency Procurements) of this Part.

## b) Conditions for Use of Sole Source Procurement

Sole source procurement is permissible when a requirement is available from only a single supplier or when only one supplier is deemed economically feasible. A requirement for a particular proprietary item does not justify a sole source procurement if there is more than

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one potential bidder or offeror authorized to provide that item. The following are examples of circumstances that could necessitate sole source procurement:

- 1) the compatibility of equipment, accessories, replacement parts, or service is a paramount consideration;
- 2) a sole supplier's items are needed for trial use or testing;
- 3) a sole supplier's item is to be procured for commercial resale;
- 4) regulated public utility services are to be procured;
- 5) the item is copyrighted or patented and the item or service is not available except from the holder of the copyright or patent;
- 6) the procurement of the media for advertising;
- 7) the procurement of art or entertainment services or athletic events;
- 8) the procurement of radio and television broadcast rights; and
- 9) procurements related to participation in mandated educational, research, public service or athletic activities of organizations of which the University is a member. Such procurements may include, but are not limited to, dues and membership fees, travel and lodging and facility usage fees.

## c) Changes

Changes to an existing contract that are germane and reasonable in scope and cost in relation to the original contract, that are necessary or desirable to complete the project, and that can be best accomplished by the contract holder may be procured under this Section.

## d) SPO to Determine

The determination as to whether a procurement shall be made as a sole source shall be made by the SPO. The determination and the basis therefor shall be in writing. The SPO may specify the application of such determination and the duration of its effectiveness.

## e) Treatment of Entertainment and Athletic Events

The procedures set forth in subsections (f) and (h) of this Section are not required for procurements of entertainment performances or athletic events. Generic sole source notices for entertainment performances or athletic events may be published in the Bulletin on a continuous or periodic basis as required to meet the needs of the entertainment or athletic venue. Contracts for entertainment performances or athletic events may be executed by the SPO on any date provided that the notice has been published for at least 14 days prior to the date of execution. Notices of contracts awarded for entertainment performances or athletic events shall be published in the Bulletin as soon as practicable after the contracts are cleared by the venue for public announcement pursuant to Sections 15-25 and 20-25 of the Code.

## f) Publication of Sole Source Notice

The SPO shall publish in the Bulletin notice of intent to contract with that vendor at least 14 days prior to execution of the contract.

- 1) If no challenge to this determination is made by a vendor within

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the 14 day period, the SPO may execute a contract with that vendor.

- 2) If a challenge is received, the SPO shall consider the information and shall commence a competitive procurement if the SPO determines that more than one economically feasible source may be available and the sole source designation is, therefore, not appropriate, unless an emergency situation exists.

- g) Negotiation in Sole Source Procurement

The SPO shall conduct negotiations, as appropriate, to reach contract terms, including price, and shall maintain a record of each sole source procurement showing:

- 1) the vendor's name;
- 2) the amount and type of the contract;
- 3) what was procured; and
- 4) the identification number of the contract file.

- h) Publicizing Awards

Notices of contracts awarded on a sole source basis shall be published in the next available Higher Education Bulletin. In the rare instance where publication of the contract price would have a detrimental impact on future procurements of similar supplies or services (for example, in connection with the purchase of a complete manuscript or art collection or other rare or one-of-a-kind items), as determined in writing by the SPO, the contract price will not be published with the notice of award but such notice shall indicate that price information is available to the public, upon request, from the SPO who conducted the procurement.

## Section 526.2030 Emergency Procurements

- a) Applications

The provisions of this Part apply to every procurement over the small purchase limit set in Section 526.2020 (Small Purchases) of this Part made under emergency conditions.

- b) Definition of Emergency Conditions

- 1) A procurement may be made under this Section in situations in which:

- A) public health or safety, including the health or safety of any particular person, is threatened;
- B) immediate repairs are needed to University property to protect against further loss or damage to University property, or to prevent loss or damage to University property;
- C) immediate action is needed to prevent or minimize serious disruption in University services;
- D) action is needed to ensure the integrity of University records;
- E) a supplier announces bankruptcy, cessation of business, or loss of franchise, or gives other similar reason such that

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making a purchase immediately is more advantageous to the University than instituting a competitive procurement under the provisions of this Part for the supplies or services;

- F) items are available on the spot market or at discounted prices for a limited time so that good business judgment mandates a "quick purchase" immediately to take advantage of the availability and price;

- G) rare items, such as articles of historical value or art collections, are available for a limited time;

- H) the opportunity to obtain entertainment performances is available for a limited time;

- I) immediate action is necessary to avoid lapsing or loss of federal or donated funds;

- J) it is necessary to extend an existing contract for such limited period of time as is needed to conduct a competitive method of source selection where terminating or allowing the contract to terminate would not be advantageous to the University; or

- K) the need for services to protect or further University interests is immediate and use of other competitive source selection procedures under the Code and this Part cannot be accomplished without significant risk of causing disadvantages to the University.

- 2) After Unsuccessful Competitive Sealed Bidding or Proposals or Request for Proposals. When bids or proposals received pursuant to a competitive sealed bid or competitive sealed proposal method are unreasonable or noncompetitive, or the price exceeds available funds and time or other circumstances will not permit the delay required to resolicit competitive sealed bids or proposals, or if emergency conditions exist after an unsuccessful attempt to use competitive sealed bidding, an emergency procurement may be made.

- c) Scope of Emergency Conditions

Emergency procurement shall be limited to those supplies, services, or construction items necessary to meet the emergency.

- d) Authority to Make Emergency Procurements

A University may make emergency procurements when an emergency condition arises and the need cannot be met through normal procurement methods, provided that, whenever practical, existing University or State contracts shall be utilized. The determining SPO shall be responsible for making the filings required in Section 20-30 of the Code.

- e) Source Selection Methods

Any method of source selection, whether or not identified in this Part, may be used to conduct the procurement in emergency situations. The procedure used shall be selected to assure that the required items are procured in time to meet the emergency. Such competition as is practicable shall be obtained.

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## f) Determination and Record of Emergency Procurement

1) Determination. The SPO shall make a written determination stating the basis for an emergency procurement and for the selection of the particular vendor. Such determinations shall be kept in the contract file of the SPO.

2) Record. An affidavit of each emergency procurement shall be filed with the CPO and the Auditor General within 10 days after the procurement and shall include the following information:

- A) the vendor's name;
- B) the amount and type of the contract (if only an estimate of the amount is available immediately, the record shall be supplemented with the final amount once known);
- C) a description of what the vendor will do or provide;
- D) the reasons for using the emergency method of source selection.

3) Notice of the emergency procurement shall be published in the next available Higher Education Bulletin. In the rare instance where publication of the contract price would have a detrimental impact on future procurements of similar supplies or services (for example, in connection with the purchase of a complete manuscript or art collection or other rare or one-of-a-kind items), as determined in writing by the SPO, the contract price will not be published with the notice of award but such notice shall indicate that price information is available to the public, upon request, from the SPO who conducted the procurement.

## Section 526.2035 Competitive Selection Procedures for Professional and Artistic Services

## a) Application

1) The provisions of this Section apply to every procurement of professional and artistic services except those subject to the Architectural, Engineering and Land Surveying Qualifications Based Selection Act [30 ILCS 535].

2) "Professional and artistic services" means those services provided under contract to a University by a person or business, acting as an independent contractor, qualified by education, experience and technical ability.

## b) Professional and artistic services are further defined as follows:

- 1) "Qualified by education" means the individual who would perform the services must have obtained the level of education specified in the Request for Proposals.
- 2) "Qualified by experience" means the individual who would perform the services must have the level of general experience specified in the Request for Proposals.
- 3) "Qualified by technical ability" means the individual who would perform the services demonstrates a high degree of skill or ability in performing services that are the same, similar, or

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closely related in nature to those specified in the Request for Proposals.

4) An essential element distinguishing professional services from other services is confidence, trust and belief in not only the ability, but the talent, of the individual performing the service.

5) Professional and artistic services are primarily for intellectual or creative skills. Contracts for services primarily involving manual skills or labor are not professional and artistic services contracts.

6) If the professional or artistic contract is with a firm or other business entity, the individuals whose education, experience and technical ability provided the basis on which the firm or other business entity was selected must meet the qualifications.

7) When a University requires services that meet the requirements of this subsection (b), the competitive selection procedures described in this Section must be followed. Services that do not meet the requirements of this Section must be procured in accordance with the other methods of source selection authorized by the Code and this Part.

c) The categories of services enumerated below shall be considered and procured as professional and artistic services. With regard to other services, the SPO may determine whether the factors identified in subsection (b), when applied to particular services to be procured, require such services to be procured as professional and artistic under these competitive selection procedures, or as services that are subject to one of the other methods of source selection authorized by the Code and this Part. The following categories are examples of disciplines that would always be professional and artistic services:

- 1) law,
- 2) accounting,
- 3) medicine,
- 4) dentistry, and
- 5) clinical psychology.

d) Architect, engineering and land surveying services shall be procured pursuant to the procedures of the Architectural, Engineering, and Land Surveying Qualifications Based Selection Act [30 ILCS 535]. Such procurements are not subject to the procedures for other professional services established in the Code or this Part.

e) Conditions for Use of Competitive Selection Procedures.

Except as authorized under Section 20-25 (Sole Economically Feasible Source Procurement) or Section 20-30 (Emergency Procurements) of the Code, these competitive selection procedures shall be used for all procurements of professional and artistic services of \$20,000 or more. Services of less than \$20,000 and for a nonrenewable term of one year or less may be procured in accordance with Section 526.2020 (Small Purchases) of this Part.

f) Prequalification. The CPO shall maintain a list of prequalified



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professional and artistic vendors in accordance with Section 526.2045 of this Part. Persons may amend statements of qualifications at any time by filing a new statement. Failure of a professional and artistic vendor to prequalify shall not be cause for rejection of a proposal.

## g) Public Notice of Competitive Selection Procedures

1) Notice of the need for professional and artistic services shall be made by the SPO in the form of a Request for Proposals.

2) Notice of the Request for Proposals shall be published in the Higher Education Bulletin at least 14 days before the proposals are due.

3) Notice shall also be distributed to prequalified persons interested in performing the services required by the proposed contract.

## h) Request for Proposals

1) Contents. The Request for Proposals shall be in the form specified by the CPO and shall contain at least the following information:

- A) the type of services required;
  - B) a description of the work involved;
  - C) an estimate of when and for how long the services will be required;
  - D) the type of contract to be used;
  - E) a date by which proposals for the performance of the services shall be submitted;
  - F) a statement of the minimum information that the proposal shall contain, which may, by way of example, include:
    - i) the name of the offeror, the location of the offeror's principal place of business and, if different, the place of performance of the proposed contract;
    - ii) if deemed relevant by the SPO, the age of the offeror's business and average number of employees over a previous period of time, as specified in the Request for Proposals;
    - iii) the abilities, qualifications and experience of all persons who would be assigned to provide the required services;
    - iv) a listing of other contracts under which services similar in scope, size, or discipline to the required services were performed or undertaken within a previous period of time, as specified in the Request for Proposals;
  - v) a plan giving as much detail as is practical explaining how the services will be performed;
- G) price;
- H) the factors to be used in the evaluation and selection process and their relative importance; and
- I) a plan for post-performance review.

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2) Evaluation. Proposals shall be evaluated on the basis of evaluation factors stated in the Request for Proposals. The relative importance of the evaluation factors will vary according to the type of services being procured. The minimum factors are:

- A) the plan for performing the required services;
- B) ability to perform the services as reflected by technical training and education, general experience, specific experience in providing the required services and the qualifications and abilities of personnel proposed to be assigned to perform the services;
- C) the personnel, equipment and facilities to perform the services currently available or demonstrated to be made available at the time of contracting; and
- D) a record of past performance of similar work.

## i) Pre-Proposal Conference

A pre-proposal conference, if appropriate, shall be conducted in accordance with Section 526.2010(g) (Pre-Bid Conference). Such a conference may be held anytime prior to the date established for submission of proposals.

## j) Delivery, Receipt and Handling of Proposals

1) Proposals shall be submitted to and opened by the CPO.

- A) Proposals and modifications shall be opened publicly at the time, date and place designated in the Request for Proposals.

- B) Opening shall be witnessed by a University employee or by any other person present, but the person opening proposals shall not serve as witness. A record shall be prepared that shall include the name of each offeror and a description sufficient to identify the service item offered. The record of proposals shall be open to public inspection after award of the contract.

- C) Proposals and modifications shall be opened in a manner designed to avoid disclosing contents to competitors. Only University personnel and contractual agents may review the proposals prior to award.

- D) Proposals of offerors who are not awarded the contract shall not be open to public inspection.

2) Transmission to the SPO. The CPO will forward timely proposals to the responsible SPO of the University along with any pertinent information contained in the files of the CPO regarding the vendors who submitted proposals.

## k) Discussions

1) Discussions Permissible. The SPO may conduct discussions with any offeror to:

- A) determine in greater detail such offeror's qualifications; and
- B) explore with the offeror the scope and nature of the required services, the offeror's proposed method of

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performance and the relative utility of alternative methods of approach.

The SPO may allow changes to the proposal based on those discussions.

- 2) No Disclosure of Information. Discussions shall not disclose any information derived from proposals submitted by other offerors, and the University conducting the procurement shall not disclose any information contained in any proposals until after award of the proposed contract has been made.

## 1) Selection of the Best Qualified Offerors

After conclusion of validation of qualifications, evaluation and discussion, the SPO shall rank the acceptable offerors in the order of their respective qualifications.

## m) Evaluation of Pricing Data

Pricing submitted for all acceptable proposals shall be ranked.

- 1) If the low price is submitted by the most qualified vendor, the SPO may award to that vendor.
- 2) If the price of the most qualified vendor is not low and if it does not exceed \$25,000, the SPO may award to that vendor.
- 3) If the price of the best qualified vendor exceeds \$25,000, the SPO, but not a designee, must state why a vendor other than the low priced vendor was selected and that determination shall be published in the Bulletin.

## n) Negotiation and Award of Contract

- 1) General. The SPO shall attempt to negotiate a contract with the best qualified offeror for the required services at fair and reasonable compensation. The SPO may, in the interest of efficiency, negotiate with other vendors, while negotiating with the best qualified vendor.

- 2) Elements of Negotiation. Contract negotiations shall be directed toward:
  - A) making certain that the offeror has a clear understanding of the scope of the work, specifically, the essential requirements involved in providing the required services;
  - B) determining that the offeror will make available the necessary personnel and facilities to perform the services within the required time; and
  - C) agreeing upon compensation that is fair and reasonable, taking into account the estimated value of the required services and the scope, complexity and nature of such services.

- 3) Successful Negotiation of Contract with Best Qualified Offeror.
  - A) If compensation, contract requirements and contract documents can be agreed upon with the best qualified offeror, the contract shall be awarded to that offeror, unless the procurement is canceled.
  - B) Compensation must be determined in writing to be fair and reasonable. Fair and reasonable compensation shall be

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determined by the SPO based on the circumstances of the particular procurement, including, but not limited to, the nature of the services needed, qualifications of the offerors, consideration of range of prices received in the course of the procurement and the agency's identified budget.

- 4) Failure to Negotiate Contract with Best Qualified Offeror.
  - A) If compensation, contract requirements, or contract documents cannot be agreed upon with the best qualified offeror, a written record stating the reasons therefor shall be placed in the file. The SPO shall advise such offeror of the termination of negotiations.
  - B) Upon failure to negotiate a contract with the best qualified offeror, the SPO may enter into negotiations with the next most qualified offeror.
  - C) Nothing in this Section shall prohibit the SPO from making a selection that represents the best value, qualifications, price and other relevant factors established in the Request for Proposals being considered. The SPO may, in considering best value, determine the proposal from a fully qualified vendor that submitted the lowest price to be the best value without further evaluation.

## o) Notice of Award

Written notice of award shall be public information and made a part of the contract file. The CPO shall publish the names of the responsible decision makers of the University, the name of the University, the successful vendor, a contract reference number or other identifier and the value of the contract. Publication shall be in the next available issue of the Bulletin.

## Section 526.2036 Other Methods of Source Selection

## a) Split Award

- 1) An award of a definite quantity requirement may be split between bidders or offerors. Each portion shall be for a definite quantity and the sum of the portions shall be the total definite quantity required. A split award may be used only when award to more than one bidder or offeror for different amounts of the same item are necessary to obtain the total quantity or the required delivery.

- 2) The SPO shall make a written determination setting forth the reasons for the split award, which determination shall be made a part of the procurement file.

## b) Multiple Award

- 1) A multiple award is an award of an indefinite quantity contract to more than one bidder or offeror when the University is obligated to order all of its actual requirements from those vendors.

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- 2) A multiple award may be made when award to two or more bidders or offerors for similar products is necessary for adequate delivery, service, or product compatibility. Any multiple award shall be made in accordance with the provisions of Section 526.2010 (Competitive Sealed Bidding), Section 526.2015 (Competitive Sealed Proposals), Section 526.2020 (Small Purchases) and Section 526.2030 (Emergency Procurements), as applicable.
  - 3) The University shall reserve the right to take bids separately if a particular quantity requirement arises that exceeds its normal requirement or an amount specified in the contract.
  - 4) If a multiple award is anticipated, the solicitation shall state this fact as well as the criteria for award.
  - 5) In a multiple award situation, one vendor may be designated as the primary recipient of orders. The other awardees may receive orders in the event the primary vendor is unable to deliver or for other reasons as determined by the SPO.
- c) Term and Condition Contracts
- 1) A term and condition contract contains agreed contractual terms and conditions established for the convenience of the parties to be used in conjunction with a subsequent procurement and processed in accordance with the requirements of the Code and this Part. A term and condition contract is not a procurement. It creates no obligation on the part of the University to procure from the vendor nor does it create an authorization for a University to order based on that master contract, except as provided by subsection (c)(2).
  - 2) Orders may be placed against term and condition contracts without use of any prescribed method of source selection for convenience of processing small procurements. Universities with reasonably defined repetitive small needs that, over the course of a fiscal year, are likely to exceed the small purchase amount set in Section 20-20 of the Code and this Part should consider a competitive method of source selection to contract for those repetitive needs.
- d) Auction
- Purchases may be made at auction in accordance with the procedural requirements applicable to the particular auction. Notice and competition is not required and the amount payable shall be the amount bid and accepted plus any required buyer's premium.
- e) Non-governmental Joint Purchase
- If the SPO determines in writing that joint procurement with an organization not eligible for joint purchasing under the Governmental Joint Purchasing Act is in the best interests of the University, the SPO may enter into an agreement with such an organization for the joint procurement of any item covered by the Code. Any method of source selection may be used and may be modified or adapted to meet the needs of the non-State entity.
- f) Federal Requirements

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- Requirements of the Code and this Part may be modified or adapted to meet federal requirements.
- g) Foreign Country Procurement
- Procurements to meet the needs of University programs located in foreign countries shall comply with the Code and this Part whenever practicable. The SPO shall maintain a record of such action.
- h) Donations
- When a procurement will have the majority of funding from a donation, the terms of which donation require use of particular procurement or contracting procedures, the SPO may follow those procedures, but shall follow the Code and this Part whenever practicable.
  - i) Printing Cost Offsets

In accordance with University policies, the University may provide advertising rights in printed products to a vendor or receive free copies of printed products from a vendor in order to reduce the overall cost of a printing contract. Procurement by competitive sealed bid or competitive sealed proposal is required when the net printing cost, after offset, exceeds the small purchase limit of Section 526.2020 of this Part.

## Section 526.2037 Tie Bids and Proposals

- a) Tie bids or proposals are those from responsive and responsible vendors that are identical in price or evaluation and represent the low price.
- b) Tie bids or proposals will be treated as follows:
  - 1) If the tied vendors include an Illinois resident vendor, the Illinois resident vendor shall be given the award. In all other situations, including if two or more Illinois resident bidders are tied, the decision shall be made in accordance with subsections (b)(2) through (5). "Illinois resident vendor" has the meaning given in Section 526.4510 (Resident Vendor Preference) of this Part.
  - 2) If there is a significant difference in responsibility (including ability to provide the service or deliver in the quantity and at the time required), the award will be made to the vendor who is deemed to be the most responsible. A vendor who has had experience in contracting with the University shall be given additional consideration in determining responsibility if the SPO determines that dealing with a vendor that has knowledge of University requirements, contracts, job sites, payment practices and such other factors and with which there has been favorable past experience increases the likelihood of successful performance.
  - 3) If there is no significant difference in responsibility, but there is a difference in the quality of the supplies or services offered, the vendor offering the best quality will be accepted.
  - 4) If there is no significant difference in responsibility and no



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difference in quality of the supplies or services offered, the vendor offering the earliest delivery time will be accepted in any case in which the solicitation specified that the needs of the requisitioning University require delivery as early as possible.

- 5) If the bids or proposals are equal in every respect, the award shall be made by lot unless the SPO determines that splitting the award among two or more of the tied bidders is in the best interest of the University. Awards may be split if all affected bidders agree, if splitting is feasible given the type of supplies or services requested, if overall pricing would not increase, if delivery would be better ensured, or if necessary or desirable to promote future competition.

## c) Records

Records shall be made of all procurements on which tie bids or proposals are received, showing at least the following information:

- 1) the identification number of the solicitation;
- 2) the supply, service, or construction item; and
- 3) a listing of all the bidders and the prices submitted.

## Section 526.2038 Modification or Withdrawal of Bids or Proposals; Mistakes

## a) Modification or Withdrawal

A bidder or offeror may withdraw or modify a bid or proposal if notice of the withdrawal or modification is received by the SPO before the latest time specified for receipt of bids or proposals. Any such modification or withdrawal, however, must be made in writing and received by the SPO prior to the scheduled bid or proposal opening. When time is of the essence, the SPO may agree to receive modifications or withdrawals by printed form conveyed by facsimile or by telephone. An originally signed written confirmation of a telephone modification or withdrawal shall be mailed or delivered by the bidder or offeror on the same day. Withdrawal of bids or proposals after bid or proposal opening will not ordinarily be permitted; however, in those cases where, in the judgment of the University, based on clear and demonstrable evidence, the bidder or offeror has made a bona fide error in the preparation of the bid or proposal and such error will result in a substantial loss to the bidder or offeror, an exception may be made.

## b) Minor Informalities

A minor informality or irregularity is one that is a matter of form or pertains to some immaterial or inconsequential defect or variation of a bid from the exact requirement of the solicitation, the correction or waiver of which would not be prejudicial to the University (i.e., the effect on price, quality, quantity, delivery, or contractual conditions is negligible). The SPO shall waive such informalities or allow the bidder to correct them depending on which is in the best interest of the University. Minor informalities include insignificant

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mistakes where the effect on price, quantity, quality, delivery, or contractual conditions is negligible.

## c) Errors Where Intended Correct Bid or Proposal is Evident

If the mistake and the intended correct bid or proposal are clearly evident on the face of the bid or proposal document, the bid or proposal shall be corrected to the intended correct bid or proposal. Examples of mistakes that may be clearly evident on the face of the bid document are typographical errors, errors in extending unit prices, transposition errors and arithmetical errors.

## d) Determinations Required

When a bid or proposal is corrected or withdrawn, or correction or withdrawal is denied, a written determination shall be prepared by the SPO showing that relief was granted or denied in accordance with this Part.

## Section 526.2040 Cancellation of Solicitations; Rejection of Bids or Proposals

## a) Scope of this Section

The provisions of this Section shall govern the cancellation of any solicitations whether issued by the University under competitive sealed bidding, competitive sealed proposals, small purchases, or any other source selection method and rejection of bids or proposals in whole or in part.

## b) Policy

Any solicitation may be canceled when the SPO believes cancellation to be in the University's best interest. Nothing shall compel the award of a contract.

## c) Cancellation of Solicitation; Rejection of All Bids or Proposals Prior to Opening

1) As used in this Section, "opening" means the date set for opening of bids, receipt of unpriced technical offers in multi-step sealed bidding, or receipt of proposals in competitive sealed proposals.

2) Prior to opening, a solicitation may be canceled in whole or in part when the SPO determines in writing that such action is in the University's best interest for reasons including, but not limited to:

- A) the University no longer requires the supplies or services;
  - B) the University no longer can reasonably expect to fund the procurement; or
  - C) proposed amendments to the solicitation would be of such magnitude that a new solicitation is desirable.
- 3) When a solicitation is canceled prior to opening, notice of cancellation shall be sent to all vendors known to have received the solicitation.
- 4) The notice of cancellation shall:
- A) identify the solicitation;
  - B) briefly explain the reason for cancellation; and

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- C) where appropriate, explain that an opportunity will be given to compete on any re-solicitation or any future procurements of similar supplies or services.

d) Cancellation of Solicitation; Rejection of All Bids or Proposals After Opening

- 1) After opening but prior to award, all bids or proposals may be rejected in whole or in part when the SPO determines in writing that such action is in the University's best interest. Such reasons may include, but are not limited to:

- A) the supplies or services being procured are no longer required;
  - B) ambiguous or otherwise inadequate specifications were part of the solicitation;
  - C) the solicitation did not provide for consideration of all factors of significance to the University;
  - D) prices exceed available funds and it would not be appropriate to adjust quantities to come within available funds;
  - E) all otherwise acceptable bids or proposals received are at clearly unreasonable prices; or
  - F) there is reason to believe that the bids or proposals may not have been independently arrived at in open competition, may have been collusive, or may have been submitted in bad faith.
- 2) When the solicitation is canceled or when all bids or proposals are rejected, the vendor who submitted the lowest bid or proposal shall be sent a notice informing the vendor of the cancellation or rejection.

e) Documentation

The reasons for cancellation or rejection shall be made a part of the procurement file and shall be available for public inspection.

f) Rejection of Individual Bids or Proposals

- 1) General. This subsection (f) applies to rejections of individual bids or proposals in whole or in part.
- 2) Notice in Solicitation. Each solicitation shall provide that any bid or proposal may be rejected in whole or in part when in the best interest of the University as provided in this Section.

3) Reasons for Rejection. Reasons for rejecting a bid or proposal may include, but are not limited to:

- A) the vendor that submitted the bid or proposal is non-responsible as determined under Section 526.2046 (Responsibility) of this Part;
- B) the bid or proposal is not responsive, that is, it does not conform in all material respects to the solicitation;
- C) the proposal ultimately (that is, after any opportunity has passed for altering or clarifying the proposal) fails to meet the announced requirements of the University in some material respect;

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- D) the supply or service item offered in the bid is unacceptable by reason of its failure to meet the requirements of the specifications or permissible alternates or other acceptability criteria set forth in the Invitation for Bids; or

- E) the proposed price is clearly unreasonable.

- 4) Notice of Rejection. Upon request, bidders or offerors whose bid or offer has been rejected shall be advised of the reasons for rejection.

## SUBPART F: SUPPLIERS, PREQUALIFICATION AND RESPONSIBILITY

## Section 526.2043 Suppliers

The University may contract with any qualified source of supply, but shall consider the following special sources, from which procurements may be made without notice and competition:

- a) Correctional Industries;
- b) State and Federal Surplus Warehouses under the jurisdiction of the Department of Central Management Services (30 ILCS 605/7a requires that surplus furniture be considered before any purchase of new furniture valued at \$500 or more per piece);
- c) Qualified workshops for the disabled;
- d) State Agencies and other governmental units described in Section 1-10(b)(1) of the Code.

## Section 526.2044 Vendor List/Required Use

- a) How to Apply to be Placed on Vendor List

Vendor lists are maintained for various service and supply classifications. To be included on a vendor list, a person should submit a request to the SPO indicating the types of services or supplies for which solicitation information is requested.

b) Application Form

- 1) An applicant will be required to provide information concerning its form of organization and bank references, and may be required to provide sources of supply or other information to determine its responsibility and capability. The current Illinois Department of Human Rights (DHR) eligibility number is to be provided, as well as the Taxpayers Identification Number (TIN), also known as the Federal Employers Identification Number (FEIN), or Social Security Number. Applicant will be furnished with a copy of the Vendor Financial Disclosure Form, which must be completed and submitted with each bid, proposal, or offer made to the University unless the bid, proposal, or offer is made in connection with a procurement that is exempt from the Code, within the small purchase limit for the type of procurement, a sole source procurement, or an emergency procurement.

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- 2) Applicants who are minorities, females, or persons with disabilities are encouraged to identify their status for certification purposes under the Business Enterprise for Minorities, Females and Persons with Disabilities Act.
- c) Addition of Vendor to List  
Upon submission to the SPO of a completed application, the applicant's name may be placed on the active vendor list for the supply or service classification requested. The SPO will specify in writing the reasons why any application is not accepted. The sending of an Invitation for Bids or other solicitation does not constitute a final or conclusive determination as to the responsibility and capability of a vendor. The bidder's qualifications and responsibility will be subject to continuous review, and the SPO may make a supplementary investigation as to the responsibility or qualification of any vendor at any time.
- d) Use of List  
Invitations for Bids and other solicitations will be sent to vendors on the vendor list for supplies or services in question, except in the following cases:
- 1) The vendor does not sell the particular commodity or equipment.
  - 2) The number of vendors for a procurement classification is of such magnitude that optimum prices may reasonably be expected without soliciting the entire vendor list. The SPO may, if he/she determines that the best interest of the University would be served, rotate the selection from the list on any equitable basis.
  - 3) When the SPO determines that the best interests of the University will be served by limiting vendors to those in defined geographic areas (example: purchases of ready-mix concrete, perishables and equipment requiring immediate service).

## Section 526.2045 Prequalification

## a) General

- 1) Opportunities to prequalify shall be announced in the Higher Education Bulletin. The announcement will specify whether the prequalification will be a condition of bidding or being awarded a contract.
  - 2) The fact that a prospective vendor has been prequalified does not necessarily represent a finding of responsibility for a particular procurement.
  - 3) Except in the case of professional and artistic services, distribution of and responses to a solicitation may be limited to prequalified vendors and award of a contract may be denied because a vendor was not prequalified.
  - 4) Prequalification will include the submission of the Vendor Financial Disclosure Form.
- b) Professional and Artistic Services
- 1) When professional or artistic services are needed on a recurring

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- basis, the CPO shall actively solicit persons engaged in providing such services to submit statements of qualifications in a prescribed format that shall include at a minimum the following information:
- A) technical education and training;
  - B) general or special experience, certifications, licenses and memberships in professional associations, societies, or boards; and
  - C) an expression of interest in providing a particular professional or artistic service.
- 2) Categories for prequalification will include, but are not limited to, those listed in Section 526.2035 of this Part.
- c) Qualified Products Lists  
Qualified products lists are treated in Section 526.2050 (Specifications and Samples) of this Part.

## Section 526.2046 Responsibility

## a) Application

Contracts are to be made only with responsible vendors. If there is doubt about responsibility, and if a bond or other security would adequately protect the University's interests, then that vendor may be awarded a contract upon receipt of the bond or other security.

## b) Standards of Responsibility

Factors to be considered in determining whether the standard of responsibility has been met include financial responsibility, insurability, effective equal opportunity compliance, payment of prevailing wages, if required by law, capacity to produce or sources of supply, performance record in the business or industry, ability to provide required maintenance service and other matters relating to the bidder's probable ability to deliver in the quality and quantity and within the time required under the contract, if it is awarded to the bidder.

## c) Information Pertaining to Responsibility

The prospective vendor shall supply information requested by the SPO concerning the responsibility of such vendor. The University may supplement this information from other sources and may require additional documentation at any time. If such vendor fails to supply the requested information, the SPO shall base the determination of responsibility upon any available information, or may find the prospective vendor non-responsible.

## d) Written Determination of Non-Responsibility Required

If a vendor who otherwise would have been awarded a contract is found non-responsible, a written determination of non-responsibility setting forth the basis of the finding shall be prepared by the SPO. The final determination shall be made part of the procurement file.

## e) Affiliated Companies

Vendors that are newly formed business concerns having substantially



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the same owners, officers, directors, or beneficiaries as a previously existing vendor that has been determined not responsible will also be determined to be not responsible unless the new organization can prove it was not set up for the purpose of avoiding an earlier determination of non-responsibility.

## SUBPART G: BID, PROPOSAL AND PERFORMANCE SECURITY

## Section 526.2047 Security Requirements

- a) An SPO may require that a vendor furnish bid, proposal, or performance security on University contracts. Whenever security is required, except as provided herein, the solicitation will clearly indicate the type and amount of security. The cost of providing security will be borne by the vendor unless otherwise stated in the solicitation.
- b) Security, unless otherwise specified, may be in the form of cashier's check, certified check, money order, irrevocable letter of credit or bond. Any bond must be issued by a surety company authorized to do business in the State of Illinois and having a rating acceptable to the University.
- c) Unless the amount is set by law, the SPO will determine the amount, in dollars or percentage of contract price, that will adequately protect the University's interests. That amount will vary depending on the type of procurement and the risks and potential losses associated with delay or failure to complete the project, and for other such reasons.
- d) A vendor may be required to furnish up to 100% performance security at any time during contract performance and at its cost, if it appears that delivery or production schedules cannot be met, quality is poor, responsibility is questioned and for similar reasons.
- e) The vendor's source of supply may also be required to furnish security. If the vendor does not have a stock of the commodity in question in the amount required or the facilities to produce the item in such amount, the University may, in addition, require the vendor to have the source of supply furnish security acceptable to the University, conditioned on such source supplying the vendor as required in the solicitation.
- f) Bid or Proposal Security
  - 1) Bid or proposal deposit. The solicitation may require each vendor to file a bid or proposal deposit, the amount of which will not ordinarily exceed 5% of the bid or proposal amount.
  - 2) Retention or use of bid or proposal deposit. The bid or proposal deposit will be considered as security for full performance of all obligations imposed on the vendor under the law and this Part, including the obligation to keep the price, bid, or proposal firm for as long a period as specified in the solicitation and the obligation to file performance security, if required, when a contract is awarded. If the vendor fails to perform any such obligations, the University will negotiate the

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bid or proposal deposit and retain from the proceeds thereof an amount sufficient to compensate it for damages suffered. The University may retain the bid or proposal deposit as liquidated damages if the solicitation so specifies.

- 3) Disposition of bid or proposal deposit. If a vendor is not one of the three lowest qualified vendors, the bid or proposal deposit will be returned to the vendor as soon as is practicable after the bid or proposal opening. The three lowest qualified vendors' deposits will be returned as soon as possible after the contract is awarded or, if performance security is required, as soon as the successful vendor has filed acceptable performance security.

## SUBPART H: SPECIFICATIONS AND SAMPLES

## Section 526.2050 Specifications and Samples

- a) Responsibilities Regarding Specifications  
The SPO shall write the necessary specifications except as noted below.
- b) Procedures for the Development of Specifications
  - 1) All procurements shall be based on specifications that accurately reflect the University's needs. Specifications shall clearly and precisely describe the salient technical or performance requirements.
  - 2) Specifications shall not include restrictions that do not significantly affect the technical requirements or performance requirements, or other legitimate University needs. All specifications shall be written in such a manner as to describe the requirements to be met, without having the effect of exclusively requiring a proprietary supply or service, or procurement from a sole source, unless no other manner of description will suffice.
  - 3) Any specifications or standards adopted by business, industry, not-for-profit organization, or governmental unit may be adopted by reference.
  - 4) A specification may provide alternate descriptions where two or more design, functional, or performance criteria will satisfactorily meet the University's requirements.
- c) Brand Name or Equal Specification
  - 1) Brand name or equal specifications may be used when the SPO determines in writing that:
    - A) no specification for a common or general use specification or qualified products list is available;
    - B) time does not permit the preparation of another form of specification, not including a brand name specification;
    - C) the nature of the product or the nature of the University's requirement makes use of a brand name or equal specification

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- suitable for the procurement; or
- D) use of a brand name or equal specification is in the University's best interest.
- 2) Brand name or equal specifications shall seek to designate more than one brand as "or equal", and shall further state that substantially equivalent products to those designated will be considered for award.
- 3) Unless the SPO determines that the essential characteristics of the brand names included in the specifications are commonly known in the industry or trade, brand name or equal specifications shall include a description of the particular design, functional, or performance characteristics that are required.
- 4) Where a brand name or equal specification is used in a solicitation, the solicitation shall contain explanatory language that the use of a brand name is for the purpose of describing the standard of quality, performance and characteristics desired and is not intended to limit or restrict competition. "Or equal" submissions will not be rejected because of minor differences in design, construction or features that do not affect the suitability of the product for its intended use. Burden of proof that the product is equal is on the vendor.
- d) Brand Name Only Specification
- 1) Determination. A brand name only specification may be used only when the SPC makes a written determination that only the identified brand name item or items will satisfy the University's needs.
- 2) Use. Brand name alone may be specified in order to fill medical prescription needs, to stock University retail-type operations, to ensure compatibility in existing systems, to preserve warranty, to ensure maintenance, or as authorized in writing by the CPO. A University may, pursuant to an authorized competitive procedure, select a particular vendor to provide supplies or services for a specified period of time, and for that period the supplier of additional, related and updated supplies and services may be limited to the selected vendor or the brand initially selected.
- 3) Competition. The SPO shall seek to identify sources from which the designated brand name item or items can be obtained and shall solicit such sources to achieve whatever degree of competition is practicable. If only one source can supply the requirement, the procurement shall be made under Section 526.2025 (Sole Economically Feasible Source Procurement) of this Part.
- e) Qualified Products List
- 1) Use. A qualified products list may be developed by the SPO when testing or examination of the supplies prior to issuance of the solicitation is desirable or necessary in order to best satisfy University requirements.
- 2) Solicitation. When developing a qualified products list, a

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- representative group of potential suppliers shall be solicited in writing to submit products for testing and examination to determine acceptability for inclusion in a qualified products list. Any potential supplier, even though not solicited, may offer its products for consideration during the time allowed for testing and examination.
- 3) Testing and Confidential Data. Inclusion on a qualified products list shall be based on results of tests or examinations conducted in accordance with established requirements. Except as otherwise provided by law, trade secrets, test data and similar information provided by the supplier will be kept confidential when requested in writing by the supplier.
- f) Proven Products
- The supply or service may be rejected if it has not been offered to other governmental or commercial accounts for at least one year. Specifications may require that the supply or services must have been used in business or industry for a specified period of time to be considered.
- g) University Required Samples
- 1) Any required samples must be submitted as instructed in the solicitation with transportation prepaid by the vendor. Each sample must be labeled with the vendor's name, address and a means of matching the sample with the applicable bid or proposal.
- 2) Any sample submitted must be representative of the item that would be delivered if a contract were awarded for that item. Samples submitted by a successful vendor will be retained to check continuing quality. Submission of samples will not limit the University's right to require adherence to specifications.
- 3) No payment will be made for University required samples. Samples not destroyed or consumed by examination or testing will be returned upon request and at vendor's expense. Such request must be made at time of submission with return collect or prepayment provisions and instructions for return accompanying the samples.
- h) Product Demonstration
- Any vendor may request time and space to demonstrate a product or service. Agreement to allow such demonstration will be solely at the University's discretion and will not entitle the vendor to a contract nor shall payment for the demonstration be allowed unless a written contract had been executed prior to the demonstration.
- i) Specifications Prepared by Other Than University Personnel
- 1) Specifications may be prepared by other than University personnel, including, but not limited to, consultants, architects, engineers, designers and other drafters of specifications for public contracts when the SPO determines that there will be no substantial conflict of interest involved and it is otherwise in the best interest of the University and provided the SPO retains the authority for final approval of the specifications. Contracts for the preparation of specifications

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by other than University personnel shall require the specification writer to adhere to University requirements.

2) The person who prepared the specifications shall not submit a bid or proposal to meet the procurement need unless the President of the University, and not a designee, determines in writing that it would be in the best interest to accept such a bid or proposal from that person.

## SUBPART I: CONTRACT TYPE

## Section 526.2055 Types of Contracts

- a) Scope  
This Section contains descriptions of types of contracts and limitations as to when they should be utilized by the University in its procurements. Types of contracts not mentioned in this Section may also be utilized.
- b) Prohibition of Cost-Plus-a-Percentage-of-Cost Contracting  
The cost-plus-a-percentage-of-cost contract is prohibited by Section 20-55 of the Code. This type of contracting may not be used alone or in conjunction with an authorized type of contract. A cost-plus-percentage-of-cost contract is one in which the vendor selects the supply or service on which the vendor's percentage is applied.
  - 1) A percentage mark-up from an agreed price list is not a cost-plus-a-percentage-of-cost contract.
  - 2) A percentage mark-up from the price of a good or service selected by the University or another vendor under contract to the University is not a cost-plus-a-percentage-of-cost contract.
- c) Types of Fixed-Price Contracts
  - 1) Firm Fixed-Price Contract. A firm fixed-priced contract provides a price that is not subject to adjustment because of variations in the vendor's cost of performing the work specified in the contract.
  - 2) Fixed-Price Contract with Price Adjustment
    - A) A fixed-price contract with price adjustment provides for variation in the contract price under special conditions defined in the contract, other than customary provisions authorizing price adjustments due to modifications to the work. The formula or other basis by which the adjustment in the vendor's price can be made shall be specified in the solicitation and the resulting contract. Adjustment allowed may be upward or downward only, or both upward and downward. Examples of conditions under which adjustments may be provided in fixed-price contracts are:
      - i) changes in the vendor's labor agreement rates as applied to an industry or area (such as are frequently found in contracts for the purchase of coal);

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- ii) changes due to rapid and substantial price fluctuations that can be related to an accepted index (such as contracts for gasoline, heating oils and dental gold alloy); and
  - iii) in requirement contracts, where a vendor is selected to provide all of the University's needs for the items specified in the contract, when a general price change applicable to all customers occurs, or when a general price change alters the base price (such as a change in a manufacturer's published price list or posted price to which a fixed discount is applied pursuant to the contract to determine the contract price).
- B) If the contract permits unilateral action by the vendor to bring about the condition under which a price increase may occur, the University shall have the right to reject the price increase and terminate without cost the future performance of the contract.
- d) Cost-Reimbursement Contracts
- 1) Determination Prior to Use
    - A) A cost-reimbursement type contract may be used only when the SPO determines in writing that such a contract is likely to be less costly to the University than any other type or that it is impracticable to obtain the items through any other type of contract.
    - B) Reimbursement of travel expenses in accordance with applicable travel control board regulations is authorized without further determinations.
  - 2) Cost Contract. A cost contract provides that the vendor will be reimbursed for allowable costs incurred in performing the contract, but will not receive a fee.
  - 3) Cost-Plus-Fixed-Fee Contract. This is a cost-reimbursement type contract that provides for payment to the vendor of an agreed fixed fee in addition to reimbursement of allowable incurred costs. The fee is established at the time of contract award and does not vary if the actual cost of contract performance is greater or less than the initial estimated cost established for such work. Thus, the fee is fixed but not the contract amount because the final contract amount will depend on the allowable costs reimbursed. The fee is subject to adjustment only if the contract is modified to provide for an increase or decrease in the scope of work specified in the contract.
  - 4) Cost Incentive Contracts
    - A) General. A cost-incentive type of contract provides for the reimbursement to the vendor of allowable costs incurred up to the ceiling amount and establishes a formula whereby the vendor is rewarded for performing at less than target cost (that is, the parties' agreed best estimate of the cost of performing the contract will vary inversely with the actual,



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allowable costs of performance and consequently is dependent on how effectively the vendor controls cost in the performance of the contract).

- B) Fixed-Price Cost-Incentive Contract. In a fixed-price cost-incentive contract, the parties establish at the outset a target cost, a target profit (that is, the profit that will be paid if the actual cost of performance equals the target cost), a formula that provides a percentage increase or decrease of the target profit depending on whether the actual cost of performance is less than or exceeds the target cost and a ceiling price. After performance of the contract, the actual cost of performance is arrived at based on the total incurred allowable costs as provided in the contract. The final contract price is then established in accordance with the formula using the actual cost of performance. The final contract price may not exceed the ceiling price. The vendor is obligated to complete performance of the contract, and, if actual costs exceed the ceiling price, the vendor suffers a loss.

- C) Cost-Reimbursement Contract with Cost-Incentive Fee.

In a cost-reimbursement contract with cost-incentive fee, the parties establish at the outset a target cost; a target fee; a formula for increase or decrease of fee depending on whether actual cost of performance is less than or exceeds the target cost, with maximum and minimum fee limitations; and a cost ceiling that represents the maximum amount that the University is obligated to reimburse the vendor. The vendor continues performance until the work is complete or costs reach the ceiling specified in the contract, including any modification thereof, whichever first occurs. After performance is complete or costs reach the ceiling, the total incurred, allowable costs reimbursed as provided in the contract are applied to the formula to establish the incentive fee payable to the vendor.

- e) Performance Incentive Contracts

In a performance incentive contract, the parties establish at the outset a pricing basis for the contract, performance goals and a formula that varies the profit or the fee if the specified performance goals are exceeded or not met. For example, early completion may entitle the vendor to a bonus, while late completion may entitle the University to a price decrease.

- f) Time and Materials Contracts; Labor Hour Contracts

Time and materials contracts provide an agreed basis for payment for materials supplied and labor performed. Labor hour contracts provide only for the payment of labor performed. Such contracts shall, to the extent possible, contain a stated ceiling or an estimate that shall not be exceeded without prior University approval.

- g) Definite Quantity and Indefinite Quantity Contracts

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- 1) Definite Quantity. A definite quantity contract is a fixed-price contract that provides for delivery of a specified quantity of supplies or services either at specified times or when ordered.
- 2) Indefinite Quantity. An indefinite quantity contract is a contract for an indefinite amount of supplies or services to be furnished at specified times, or as ordered, that establishes unit prices of a fixed-price type. Generally an approximate quantity or the best information available as to quantity is stated in the solicitation. The contract may provide a minimum quantity the University is obligated to order and may also provide for a maximum quantity provision that limits the University's obligation to order.
- 3) Requirements Contracts. A requirements contract is an indefinite quantity contract for supplies or services that specifically obligates the University to order all its actual requirements during a specified period of time.

- h) Leases

A lease is a contract for the use of supplies or real property under which title will not pass to the University at any time, except pursuant to an option to purchase.

- i) Recovery Contracts

Contracts may provide for payment to the vendor of a percentage of the amount the vendor recovers or collects on behalf of the University. The percentage may be fixed or may vary depending on amount of recovery or other factors, and the percentage may be paired with a fixed price or cost reimbursement method.

- j) Option Provisions

When a contract is to contain an option for renewal, extension, or purchase, notice of such provision shall be included in the solicitation. These options may be exercised without taking other procurement action when the option is established for exercise at the University's option.

- k) State Produced Supplies and Services

Notwithstanding any provision in any contract, supplies or services available from State programs, such as Correctional Industries, may be ordered without violating any contract.

- l) Extraordinary Quantities

Notwithstanding any provision in any contract, the University reserves the right to take bids separately if a particular quantity requirement arises that exceeds the University's normal needs or ordering requirements.

- m) Energy Conservation

The CPO may authorize an IFB, RFP, or sole source negotiation for energy conservation measures whereby the University would make payment based on utility cost savings. Such contract shall require a clearly defined baseline of energy usage and method of measuring cost savings taking into account at least differing weather conditions, changes in

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- facility usage and cost of energy.
- n) Printing Contracts for Annual Reports  
Contracts for the printing of annual reports that the University is required by statute to submit to the Governor will provide that such reports will be printed in the form specified by the Governor.

## SUBPART J: DURATION OF CONTRACTS

## Section 526.2060 Duration of Contracts - General

- a) General
- 1) A multi-term contract for a term of up to 10 years is authorized when determined by the SPO to be in the best interest of the University.
  - 2) A software license may have a term longer than 10 years, including for a perpetual term, provided the payment term is limited to no more than 10 years.
  - 3) The length of a lease for real property or capital improvements shall be in accordance with Section 526.4025.

- b) Subject to Appropriation  
The contractual obligation of both parties in each fiscal period succeeding the first is subject to appropriation and availability of funds. The contract shall provide that, in the event that funds are not available for any succeeding fiscal period, the remainder of such contracts shall be canceled without penalty to, or further payment being required by, the University. This provision applies to only those contracts that are funded in whole or in part by funds appropriated by the Illinois General Assembly.

- c) Multi-Term Contract Procedure

The solicitation shall state:

- 1) the proposed term;
- 2) the amount of supplies or services required for the proposed contract period;
- 3) the type of pricing requested (e.g., firm for term);
- 4) how award will be determined.

- d) Renewals

- 1) When the original procurement specifically called for an initial term plus options to renew, the renewal options may be exercised without further procurement activity, provided that the initial term and the exercised renewal options do not exceed 10 years, the terms and conditions do not change except as provided in the contract (such as price escalations tied to an index) and the options are reserved solely to the University. Any renewal that requires amendment or modification of a material term or condition of the contract shall be treated as a new contract.
- 2) When the original procurement was silent as to renewals, the renewal must be treated as a new contract. Such renewal will start a new term not to exceed 10 years.

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- 3) When a renewal will result in the total term, counting the initial term and any previous renewals, to exceed 10 years, the renewal must be treated as a new contract. Such renewal will start a new term not to exceed 10 years.

## SUBPART K: PROCUREMENT FILES

## Section 526.2080 Written Determinations; Other Procurement Records

All written determinations required under Article 20 of the Code and Subparts E, F, G, H, I, and J of this Part shall be placed in the contract files maintained by the CPO. Except as otherwise specified in this Part, all other procurement records shall be placed in the contract files maintained by the SPO.

## SUBPART L: CONTRACT WORKING CONDITIONS

## Section 526.2560 Prevailing Wage

- a) In order to be considered responsible under Section 526.2046, vendors of the following classifications of services must certify to the University that wages to be paid to their employees are no less, and fringe benefits and working conditions of employees are not less favorable, than those prevailing in the locality where the proposed contract with the University is to be performed:

- 1) Printing;
- 2) Janitorial services, window washing, food services and security guard services having a monthly contract price of \$200 or a yearly price of at least \$2,000.
- b) Vendors awarded contracts or subcontracts on University public works projects shall agree to comply with the requirements of the Prevailing Wage Act [820 ILCS 130].
- c) Prevailing wages, benefits and conditions will be determined by the Illinois Department of Labor.

## Section 526.2570 Equal Employment Opportunity; Affirmative Action

Section 7-105A of the Illinois Human Rights Act (IHRA) [775 ILCS 5/7-105A] authorizes the Department of Human Rights (DHR) to promulgate policies, rules and regulations to implement the provisions of the IHRA applicable to eligible vendors and public contractors. DHR has promulgated rules, 44 Ill. Adm. Code 750, that establish public contractor and eligible vendor duties, obligations and reporting requirements and are applicable under this Part. That Part requires that certain employers register with DHR in order to be eligible for the award of certain public contracts (44 Ill. Adm. Code 750-Appendix A).

## SUBPART M: CONSTRUCTION AND CONSTRUCTION RELATED SERVICES

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## Section 526.3005 Construction and Construction Related Services

## a) General Procedures

- 1) In the case of contracts for construction of buildings or for other construction work in or about buildings or grounds where the entire estimated cost of such work exceeds the amount stipulated by Section 20-20 of the Code, prospective contractors, as well as architects and engineers employed in connection with such projects, may be prequalified to determine their responsibility (for architects, engineers and land surveyors, see the Architectural, Engineering and Land Surveying Qualifications Based Selection Act [30 ILCS 535]). If the total estimated cost of such work exceeds the amount stipulated by Section 30-30 of the Code, separate specifications shall be prepared for all equipment, labor and materials in connection with, at a minimum, the following five subdivisions of work to be performed:

- A) Plumbing.
- B) Heating, piping, refrigeration and automatic temperature control systems, including the testing and balancing of such systems.
- C) Ventilating and distribution systems for conditioned air, including the testing and balancing of such systems.
- D) Electrical wiring.
- E) General contract work.

- 2) The specifications shall be drawn so as to permit separate and independent competitive bidding upon each of the above five (or more) subdivisions of work. All contracts awarded for any part thereof shall award the five (or more) subdivisions of such work separately to responsible and reliable contractors engaged in these classes of work. Such contracts, at the discretion of the University, may be assigned to the successful bidder on the general contract work or to the successful bidder on the subdivision of work designated by the University prior to bidding as the prime subdivision of work, with the provision that all payments will be made directly to the contractors for the five (or more) subdivisions of such work upon compliance with the conditions of the contract. Any contract may be let for one or more buildings in any project to the same contractor. Specifications shall require, however, that unless the buildings are identical, a separate price shall be submitted for each building. The contract may be awarded to the lowest responsible bidder for all of the buildings included in the specifications.

## b) Request for Payment Form Specified by University

To bill the University for remodeling, renovation, or construction work done, the vendor must submit a payment request in the form specified by the University.

## c) Periodic Payments

When provided in the contract, periodic payments can be made during

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the course of such work, upon a certificate of a licensed architect or engineer indicating the proportionate amount of the total work completed satisfactorily.

- d) Retained Percentage  
When periodic payments are made, the University shall retain a fixed percentage, specified in the contract, to insure faithful completion of the contract.
- e) Additional Work  
No amount of funds, in addition to those provided for in a contract for repairs, maintenance, remodeling, renovation, or construction, may be obligated or expended unless the additional work to be performed or materials to be furnished are germane to the original contract. Even if germane to the original contract, no additional expenditures or obligations may, in their total combined amount, be in excess of the contract amount as provided in Section 30-35(b) of the Code unless they have received the prior written approval of an official pre-designated by the University with the appropriate level of authority to make such determination. Notices of additional expenditures or obligations in excess of the small purchase limit of Section 20-20 of the Code shall be published in the next available Higher Education Bulletin.
- f) Improvements to Leased Real Estate  
The procedures set forth in this Part shall apply, as appropriate, to contracts for improvements to real estate leased to the University.
- g) Construction Manager Services  
Procurement of a Construction Manager for project management services that may include, but are not limited to, scheduling, contractor coordination, and administration of pay requests, but not including design services, shall be made in accordance with Section 526.2015 of this Part (if the services to be performed are non-professional in nature) or Section 526.2035 of this Part (if the services to be performed include professional or artistic services).

## SUBPART N: REAL PROPERTY LEASES AND CAPITAL IMPROVEMENT LEASES

## Section 526.4005 Applicability

Except as otherwise authorized by law, real property leases and capital improvement leases are subject to, and shall be procured by, the Universities in accordance with the Code and this Part.

## Section 526.4010 Authority

SPOs shall have the authority to procure leases. SPOs will establish standards and criteria for leased space procurement and space assignment to meet the financial and administrative objectives needed to most efficiently and effectively provide adequate space to operate the University in accordance with its mission.



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**Section 526.4015 Method of Source Selection**

Leases shall be procured by a Request for Information (RFI) process except that the process need not be used in any of the following circumstances:

- a) Property of less than 10,000 square feet.
- b) Rent of less than \$100,000 per year.
- c) Duration of less than one year that cannot be renewed.
- d) Specialized space available at only one location.
- e) Renewal or extension of leases in effect before July 1, 1998, provided that:
  - 1) the CPO determines in writing that the renewal or extension is in the best interest of the University;
  - 2) the CPO submits his or her written determination and the renewal or extension to the Board;
  - 3) the Board does not object in writing to the renewal or extension within 30 days after its submission; and
  - 4) the CPO publishes notice of the renewal or extension in the Higher Education Bulletin.
- f) Leases with governmental units when deemed by the CPO to be in the best interest of the University.

**Section 526.4020 Request for Information**

## a) RFI Form

When required, an RFI shall be issued and shall include:

- 1) the type of property to be leased;
- 2) the proposed uses of the property;
- 3) the duration of the lease;
- 4) the preferred location of the property; and
- 5) a general description of the configuration desired.

## b) Public Notice

Public notice of the RFI for the availability of real property to be leased shall be published in the Higher Education Bulletin at least 14 days before the date set forth in the request for receipt of responses and shall also be published in similar manner in a newspaper of general circulation in the community or communities where the University is seeking space.

## c) Response

The RFI response shall consist of written information sufficient to show that the respondent can meet minimum criteria set forth in the RFI.

## d) Negotiation and Determination

The SPO may enter into discussions with respondents of the RFI for the purpose of clarifying University needs and the information supplied by the respondents. On the basis of the information supplied and discussions, if any, an SPO shall make a written determination identifying the responses that meet the minimum criteria set forth in the RFI. Negotiations shall be entered into with all qualified

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respondents for the purpose of securing a lease that is in the best interest of the University.

## e) Reporting and Filing

- 1) When the lowest response by price is selected, a written report of the negotiation shall be retained in the lease files and shall include the reasons for the final selection.
- 2) When the lowest response by price is not selected, the SPO shall forward to the CPO, along with the lease, notice of the identity of the lowest respondent by price and written reasons for the selection of a different response. The CPO shall publish the written reasons in the next volume of the Higher Education Bulletin.

**Section 526.4025 Lease Requirements**

## a) Length of Leases

- 1) Maximum term. Except where a longer term is authorized by law, leases shall be for a term not to exceed 10 years and shall include a termination option in favor of the University after 5 years.

- 2) Renewal Option. Leases may include a renewal option but an option to renew may be exercised only when the SPO determines in writing that renewal is in the best interest of the University and publishes a notice of the intent to exercise the option in the Higher Education Bulletin at least 60 days prior to the exercise of the option.

## b) Subject to Appropriation

All leases shall recite that they are subject to termination and cancellation in any year for which the General Assembly fails to make an appropriation to make payments under the terms of the lease. This provision applies to only those leases that are funded in whole or in part by funds appropriated by the Illinois General Assembly.

**Section 526.4030 Purchase Option**

Initial leases of all space in entire, free-standing buildings shall include an option to purchase exercisable by the University, unless the SPO determines that inclusion of such purchase option is not in the University's best interest and makes that determination in writing along with the reasons for making that determination and publishes the written determination in the Higher Education Bulletin. Leases from governmental units and not-for-profit entities are exempt from the requirements of this Section.

**Section 526.4035 Rent Without Occupancy**

Except when deemed by the Board to be in the best interest of the University, no University may incur rental obligations before having occupancy or possession of the space rented. For the purposes of this Section, the terms

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"occupancy" and "possession" shall have the same meaning.

**Section 526.4040 Local Site Preferences**

Upon the request of the chief executive officer of a unit of local government, leasing preferences may be given to sites located in enterprise zones, tax increment districts, or redevelopment districts.

## SUBPART O: PREFERENCES

**Section 526.4505 Procurement Preferences**

The procurement preferences identified in Article 45 of the Code must be considered in developing procurement documents, conducting evaluations and drafting contracts. Any preferences applicable to an individual procurement will be stated in the solicitation for that procurement.

**Section 526.4510 Resident Vendor Preference**

- a) "Illinois resident vendor" as used in this Section means a person authorized to transact business in this State and having a bona fide establishment for transacting business within this State at which it was actually transacting business on the date when any competitive solicitation for a public contract was first advertised or announced, including a foreign corporation duly authorized to transact business in this State that has a bona fide establishment for transacting business within this State at which it was actually transacting business on the date when any competitive solicitation for a public contract was first advertised or announced.
- b) In breaking a tie bid or proposal as described in Section 526.2037, an Illinois resident vendor shall be given the award.
- c) An Illinois resident vendor shall be allowed a preference as against a non-resident vendor equal to any in-state vendor preference given or required by the state of the non-resident vendor.

**Section 526.4530 Correctional Industries**

The CPO, in consultation with the Department of Corrections, shall, on a case-by-case basis, determine which supplies or services available from Correctional Industries meet the University's requirements and may be given preference. Procurements from Correctional Industries may be made without notice and competition.

**Section 526.4535 Sheltered Workshops for the Disabled**

Various supplies and services are available from qualified workshops for the disabled under a program managed by the Department of Central Management Services. Such procurements may be made without notice and competition.

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Information regarding the workshops is available from the Department of Central Management Services.

**Section 526.4540 Gas Mileage**

- a) Specifications for the purchase of new passenger automobiles shall require compliance with minimum gas mileage requirements established in Section 45-40 of the Code. As used in this Section, passenger automobile does not include station wagons, vans, four-wheel drive vehicles, emergency vehicles, police or fire vehicles.
- b) The SPO may exempt a procurement from the requirement of subsection (a) when a demonstrated need has been presented to the SPO in writing.
- c) The CPO may require use of a uniform form or format for the SPO's determination that an exemption is warranted.

**Section 526.4545 Small Business****a) Small Business Specialist**

The CPO shall designate one of the SPOs to be responsible for engaging a small business specialist, who shall have the duties set forth in Section 45-45(e) of the Code, and who shall also act as coordinator of small business initiatives among the Universities. The designated SPO shall make the small business annual report to the General Assembly required under Section 45-45(f) of the Code.

**b) Small Business Set-Asides**

Based upon recommendations of the small business specialist and the Universities, and in conformity with Section 45-45 of the Code, the CPO may designate as small business set-asides a fair proportion of supply and service contracts under the jurisdiction of the CPO for public institutions of higher education for award to small businesses in Illinois.

**Section 526.4570 Contracting with Businesses Owned and Controlled by Minorities, Females and Persons with Disabilities**

Each University shall be responsible for its own compliance with the requirements of the Business Enterprise Act for Minorities, Females and Persons with Disabilities [30 ILCS 575].

## SUBPART P: ETHICS

**Section 526.5013 Conflicts of Interest Prohibited by the Code**

- a) Any bid, proposal, or offer the acceptance of which would result in any of the following types of contracts prohibited by Section 50-13 of the Code will be subject to rejection.
  - 1) Office or Employment. Section 50-13(a) of the Code provides:  
*It is unlawful for any person holding an elective office in this*

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State, holding a seat in the General Assembly, or appointed to or employed in any of the offices or agencies of State government and who receives compensation for such employment in excess of 60% of the salary of the Governor of the State of Illinois, or who is an officer or employee of the Capital Development Board or the Illinois Toll Highway Authority, or who is the spouse or minor child of any such person, to have or acquire any contract, or any direct pecuniary interest in any contract therein, whether for stationery, printing, paper, or any services, materials, or supplies, that will be wholly or partially satisfied by the payment of funds appropriated by the General Assembly of the State of Illinois or in any contract of the Capital Development Board or the Illinois Toll Highway Authority.

- 2) Financial Interests. Section 50-13(b) of the Code provides: It is unlawful for any firm, partnership, association, or corporation, in which any person as described in subsection (a) is entitled to receive more than 7 1/2% of the total distributable income or an amount in excess of the salary of the Governor, to have or acquire, obtain, any such contract or direct pecuniary interest therein.
- 3) Combined Financial Interests. Section 50-13(c) of the Code provides: It is unlawful for any firm, partnership, association, or corporation, in which any person listed in subsection (a) together with his or her spouse or minor children is entitled to receive more than 15%, in the aggregate, of the total distributable income or an amount in excess of 2 times the salary of the Governor, to have or acquire any such contract or direct pecuniary interest therein.
- b) For the purposes of this Section, an individual has a direct pecuniary interest in a contract when the individual is owed a payment or otherwise receives a direct financial benefit in conjunction with performance of a contract, and would include finders fees and commission payments.
- c) For the purposes of this Section, "distributable income" means the income of a company after payment of all expenses, including employee salary and bonus, and retained earnings, which is distributed to those entitled to receive a share of such income.
- d) This Section does not apply to those elected to local government, including school district, offices nor does it apply to those elected to federal offices in this State. This Section does apply to those elected to an office of Illinois State government.
- e) Additional exceptions to the application of this Section are listed in Section 50-13(f) of the Code.

## Section 526.5020 Exemptions

If the SPO finds a conflict of interest under Section 50-13 of the Code with

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the vendor selected for award or contract negotiations, the SPO shall forward to the CPO the name of the vendor and a description of the proposed contract and of the potential conflict, and shall state why an exemption should be granted. The CPO shall decide whether to disapprove the contract or submit the file to the Governor or the Governor's designated ethics board to determine whether an exemption should be granted in accordance with Section 50-20 of the Code.

## Section 526.5023 Other Conflicts of Interest

- a) Except as otherwise specified in the Public Officer Prohibited Activities Act [50 ILCS 105], no member of the University's governing board shall be directly or indirectly interested in any contract to be made by the Board for any purposes whatsoever.
- b) No contract will be awarded to a University officer or employee or to a firm, partnership, association, or corporation, the owner or principal owners or major officers or primary employees of which are officers or employees of the University, unless such contract is deemed essential to University operations and is approved by the President of the University (or designee) and such approval is filed with the contract.
- c) No contract will be awarded to a member of the immediate family of an officer or employee of the University or to a firm, partnership, association, or corporation, the owner or principal owners or major officers or primary employees of which are members of the immediate family of officers or employees of the University, unless such contract is deemed beneficial to University operations and is approved by the President of the University (or designee) and such approval is filed with the contract.

## Section 526.5030 Revolving Door Prohibition

As provided in Section 50-30 of the Code, the CPO, SPOs and all of their designees whose principal duties are related to University procurement are prohibited for a period of 2 years after terminating an affected position from engaging in any procurement activity relating to their former employer. The prohibition applies to persons who terminate an affected position after January 15, 1999, and includes, but is not limited to, submitting bids, proposals, offers, or contract documents on their own behalf or on behalf of any vendor.

## Section 526.5035 Disclosure of Financial Interests and Potential Conflicts of Interest

- a) For the purposes of the financial disclosures required of vendors under Section 50-35 of the Code, the following terms shall have the same meaning as in the Code and as further defined below:
  - 1) "Distributive or Distributable Income" - The income of a company after expenses, including employee salaries and bonuses and



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retained earnings, which is distributed to those entitled to receive a share of such income.

- 2) "Personal Services" - Any contract for services subject to this Code, including, by way of example, professional and artistic services, repair services, cleaning and guard services.
- 3) "Competitively Bid" - A contract let pursuant to Section 20-10 of the Code.
- 4) "Subject to Federal 10K Reporting" - Subject to the reporting requirements of Section 13 or 15(d) of the Securities Exchange Act of 1934.
- 5) "10K Disclosure" - A report required under Section 13 or 15(d) of the Securities Exchange Act of 1934.
- b) Once a disclosure is made in relation to a particular contract, the disclosure need not be repeated if the contract is amended.
- c) 10K Disclosures
 

Any vendor subject to Federal 10K reporting requirements may submit its 10K to the University in satisfaction of the disclosure requirement of Section 50-35(b) of the Code provided the vendor also identifies the specific sections or parts in the 10K disclosure where the University may find information, if any, pertaining to those who have an ownership interest or an interest in the distributable income of the vendor or its parent, or other information that the vendor knows or reasonably should know identifies a potential conflict of interest with the State. If the financial interest or conflict of interest information requested by the University is not in the 10K, but is in a document referenced in the 10K, or in a document that may be submitted to the SEC in conjunction with or in lieu of the 10K, then that additional documentation shall be provided as well.

The disclosures of each successful bidder or offeror shall become a part of the publicly available contract file. Any potential conflict of interest identified by the public and brought to the attention of the CPO or SPO shall be investigated.

## SUBPART Q: CONCESSIONS

## Section 526.5325 Granting of Concessions/Reporting

The University shall award concessions to property under its jurisdiction at its discretion in accordance with University policies. All University contracts granting concessions shall be reduced to writing and reported in the Higher Education Bulletin no less frequently than annually. Reports concerning the licensing or other disposition of University intellectual property will be in the form designated for the annual reports of such activity to the Association of University Technology Managers or such other standard format as may be developed by the Universities and approved by the CPO. Other types of concessions will be reported separately in a standardized format approved by the CPO.

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## SUBPART R: COMPLAINTS, PROTESTS AND REMEDIES

## Section 526.5520 Suspension

- a) Application
 

This Section applies to all debarments or suspensions of vendors from consideration for award of contracts under the Code.

The SPO may suspend a vendor from doing business with the University or with respect to specific types of supplies or services. A suspension may be issued upon a showing the vendor violated the Code or this Part, or failed to conform to specifications or terms of delivery.
- c) When the SPO finds cause exists for suspension, a notice of suspension, including a copy of such determination, shall be sent to the suspended vendor. Bids or proposals will not be solicited from the suspended vendor, and, if received, will not be considered during the period of suspension.
- d) A vendor may be suspended for a period of time commensurate with the seriousness of the offense, but for no more than five years. The suspension will be effective seven calendar days after receipt of notice unless an objection is filed. If an objection is filed, suspension would not become effective until the evaluation of the objection is completed.
- e) The CPO may debar a vendor. Debarment is the permanent suspension of a vendor from doing business with the University. A debarment may only take place in those instances involving bribery or attempted bribery of a State of Illinois officer or employee, or as otherwise allowed or required by law. Bids or proposals received from the debarred vendor will not be considered.
- f) The CPO shall maintain a master list of all suspensions and debarments. The master list will retain information concerning suspensions and debarments as public records. Such records will be maintained for a period of at least three years following the end of the suspension or debarment. Such public information may be considered in determining responsibility.

## Section 526.5530 Cancellation of Contracts

- a) In any of the following cases the SPO shall have the right to terminate or rescind any contract entered into under this Part:
  - 1) The successful vendor fails to furnish a satisfactory performance bond within the time specified.
  - 2) The vendor fails to make delivery at the place or within the time specified in the contract or as ordered by the purchasing agency.
  - 3) Any supplies or services provided under the contract are rejected (for not meeting specification, not conforming to sample, or not being in good condition when delivered) and are not promptly replaced by the vendor. If there are repeated rejections of the

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vendor's supplies or services, this shall be grounds for termination or rescission, even though the vendor offers to replace the supplies or services promptly.

- 4) The vendor is guilty of misrepresentation (for example, misbranding of food or drugs) in connection with another contract for the sale of supplies or services to the University such that it cannot reasonably be depended upon to fulfill his obligations as a responsible vendor under any of his contracts with the University.

- 5) The vendor should be adjudged bankrupt; enter into receivership or make a general assignment for the benefit of creditors due to insolvency; disregard laws, rules, or instructions of the SPO; or act in violation of any provision of the contract; or if the contract conflicts with any statutory or constitutional provision of the State of Illinois or of the United States.

- 6) Any other breach of contract or any other unlawful act by the vendor.

- b) Cancellation for Fraud, Collusion, Illegality, Etc.

The University may cancel any contract it established if there is sufficient evidence to show that:

- 1) The contract was obtained by fraud, collusion, conspiracy, or other unlawful means; or
- 2) The contract conflicts with any statutory provision of the State of Illinois or of the United States.

- c) Withholding Money to Compensate University for Damages

If a contract is terminated or rescinded under this Section, the University may deduct from whatever is owed the vendor on that or any other contract an amount sufficient to compensate the University for any damages suffered by it because of the vendor's breach of contract or other unlawful act on his part on which the cancellation is based.

- d) Damages

The damages for which the University may be compensated as provided in this Section or by a suit on the vendor's performance bond or by other legal remedy shall include, but are not limited to, the following:

- 1) the additional cost of supplies or services bought elsewhere;
- 2) cost of repeating the procurement procedure;
- 3) any expenses incurred because of delay in receipt of supplies or services; and
- 4) any other damages caused by the vendor's breach of contract or unlawful act.

## Section 526.5540 Violation of Statute or Rule

- a) Determination that Solicitation or Award Violates Law

If the CPO or the SPO finds that the solicitation or proposed award is in violation of statute or rule, the CPO or the SPO may cancel the solicitation or proposed award, or make modifications to correct the violation, if such correction may be legally accomplished.

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- b) Determination that Contract Violates the Code or this Part  
Contracts based on awards or solicitations that were in violation of law shall be terminated at no cost to the University unless statute or rule allows the University to modify, ratify, or take other corrective action.

- c) Effect of Declaring a Contract Null and Void  
In all cases in which a contract is voided, the University shall endeavor to return those supplies delivered under the contract that have not been used or distributed. No further payments shall be made under the contract.

## Section 526.5550 Protests

- a) Protest Resolution by the SPO

An actual or prospective bidder, offeror, or vendor that may be aggrieved in connection with a procurement may file a protest on any phase of solicitation or award, including but not limited to, specifications preparation, bid solicitation, or award.

- b) Complaint to SPO

Complainants should seek resolution of their complaints initially with the SPO who issued the solicitation. Such complaints may be made orally or in writing.

- c) Filing of Protest

1) Protests shall be made in writing to the chief business officer of the University and shall be filed within 14 days after the protester knows or should have known of the facts giving rise to the protest. A protest is considered filed when physically received by the chief business officer. Protests filed after the 14 day period shall not be considered. In regard to a protest regarding specifications, the protest must be received within 14 days after the date the solicitation was issued, and in any event must be received by the University at the designated address before the date for opening of bids or proposals.

- 2) To expedite handling of protests, the envelope should be labeled "Protest". The written protest shall include as a minimum the following:

- A) the name and address of the protester;
- B) appropriate identification of the procurement, and, if a contract has been awarded, its number;
- C) a statement of reasons for the protest; and
- D) supporting exhibits, evidence, or documents to substantiate any claims unless not available within the filing time, in which case the expected availability date shall be indicated.

- d) Requested Information; Time for Filing

Any additional information requested by the University shall be submitted within the time periods established by the requesting source in order to expedite consideration of the protest. Failure of the

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protesting party to comply expeditiously with a request for information by the chief business officer may result in resolution of the protest without consideration of that information.

e) Decision by the Chief Business Officer.

A decision on a protest shall be made by the chief business officer as expeditiously as possible after receiving all relevant requested information.

f) Effect of Judicial or Administrative Proceedings

If an action concerning the protest has commenced in court, the chief business officer shall not act on the protest.

## SUBPART S: GOVERNMENTAL JOINT PURCHASING

## Section 526.6500 General

In an effort to make the procurement process more efficient, State (including Universities) and other governmental units (including not-for-profit entities authorized by law to participate in joint purchasing) may agree to utilize each others' procurement contracts. This authority is governed by this Subpart and the Governmental Joint Purchasing Act [30 ILCS 525].

## Section 526.6510 No Agency Relationship

In any joint procurement situation, each University and governmental unit must issue its own purchase order, accept its own deliveries and make its own payments. No University shall have any obligation to the vendor for payment of orders placed by other Universities or other governmental units.

## SUBPART T: MISCELLANEOUS PROVISIONS OF GENERAL APPLICABILITY

## Section 526.7000 Severability

If any provision of this Part or any application thereof is held invalid, such invalidity shall not affect other provisions or applications of this Part that can be given effect without such invalid provision or application.

## Section 526.7005 Supply Inventory

The University shall manage its inventory of supplies in compliance with the 12-month inventory restriction of Section 50-55 of the Code.

## Section 526.7010 University Furnished Property

If the University provides any property to the vendor in furtherance of the contract, such property shall remain the property of the University but may be consumed by the vendor if necessary to complete the contract. Vendor will issue a receipt for the property and will be responsible for its safekeeping and for return of unused property to the University.

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## Section 526.7015 Inspections

a) Inspection of Plant or Site

The University, under the authority of the CFO, may enter a vendor's plant or place of business to:

- 1) inspect supplies or services for acceptance by the University pursuant to the terms of a contract;
- 2) audit the books and records of any vendor;
- 3) investigate an action to debar or suspend a person from consideration for award of contracts pursuant to the Code;
- 4) determine whether the standards of responsibility have been met or are capable of being met;
- 5) determine if the contract is being performed in accordance with its terms; and
- 6) for any other purpose permitted by law.

b) Inspection and Testing of Supplies and Services

1) Solicitation and Contractual Provisions. University contracts may provide that the University may inspect supplies and services at the vendor's or subcontractor's facility and perform tests to determine whether the supplies or services conform to solicitation requirements, or, after award, to contract requirements, and are therefore acceptable. Such inspections and tests shall be conducted in accordance with the terms of the solicitation and contract.

2) Procedures for Trial Use and Testing. The University may establish operational procedures governing the testing and trial use of equipment, material and other supplies, and the application of resulting information and data to specifications or procurements.

c) Conduct of Inspections

1) Inspectors. Inspections or tests shall be performed so as not to unduly delay the work of the vendor. No inspector other than the SPO may change any provision of the specifications or the contract without written authorization of the SPO. The presence or absence of an inspector shall not relieve the vendor or subcontractor from any requirements of the contract.

2) Location. When an inspection is made in the plant or place of business of a vendor, such vendor shall provide without charge all reasonable facilities and assistance for the safety and convenience of the person performing the inspection or testing.

3) Time. Inspection or testing of supplies and services performed at the plant or place of business of any vendor shall be performed at reasonable times.

d) Inspection of Construction Projects

On-site inspection of construction shall be performed in accordance with the terms of the contract.

## Section 526.7020 Record Retention



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Books and records that relate to performance of a University contract, including subcontracts, and that support amounts charged to the University shall be maintained:

- a) by a vendor, for three years from the date of final payment under the prime contract; and
- b) by a vendor for such longer period of time as is necessary to complete ongoing or announced audits.

**Section 526.7030 No Waiver of Sovereign Immunity**

Nothing in this Part shall be deemed to be a waiver of sovereign immunity.

## DEPARTMENT OF HUMAN SERVICES

## NOTICE OF ADOPTED AMENDMENTS

- 1) Heading of the Part: Child Care
- 2) Code Citation: 89 Ill. Adm. Code 50
- 3) Section Numbers: Adopted Action:  
50.230 Amendment  
50.235 Amendment  
50.310 Amendment
- 4) Statutory Authority: Implementing Articles I through IX and authorized by Section 12-13 of the Illinois Public Aid Code [305 ILCS 5/Arts. I through IX and 12-13].
- 5) Effective Date of Amendments: November 27, 1998
- 6) Does this rulemaking contain an automatic repeal date? No
- 7) Do these amendments contain incorporations by reference? No
- 8) A copy of the adopted amendment, including any material incorporated by reference, is on file in the agency's principal office and is available for public inspection.
- 9) Notice of Proposal Published in Illinois Register:  
July 17, 1998 (22 Ill. Reg. 12425)
- 10) Has JCAR Issued a Statement of Objections to this Rule? No
- 11) Difference(s) between proposal and final version:  
The following changes were made in the text of the proposed amendments:
  1. In Section 50.230(b)(3), an underlined comma was added after "high school degree".
  2. In Section 50.235(b)(2), "U.S.C." was struck and "USC" was added.

No other changes have been made in the text of the proposed amendments.
- 12) Have all the changes agreed upon by the agency and JCAR been made as indicated in the agreements issued by JCAR? Yes
- 13) Will these amendments replace an emergency amendments currently in effect?  
Yes
- 14) Are there any amendments pending on this Part: No
- 15) Summary and Purpose of Rule: These amendments are needed to enable child

## DEPARTMENT OF HUMAN SERVICES

## NOTICE OF ADOPTED AMENDMENTS

care services to continue with no interruption. The change is to use gross earned income minus 10%. The Department is also providing child care services to 1325 parents who were grandfathered because they were receiving child care to obtain education. To continue uninterrupted services, this rulemaking allows a limited test program. The 1325 parents, if they are also working 25 hours per week and have not received more than two years of child care services due to education, would continue to be eligible to receive child care. This rulemaking also reduces the co-payment for parents whose child is in care less than 5 hours per day.

- 16) Information and answers to questions regarding these adopted amendments shall be directed to:

Mrs. Susan Warner Weir, Bureau Chief  
Bureau of Administrative Rules and Procedures  
Department of Human Services  
100 South Grand Avenue East  
3rd Floor, Harris Bldg.  
Springfield, Illinois 62762  
Telephone number: 217/785-9772

The full text of Adopted Amendments begins on the next page:

## DEPARTMENT OF HUMAN SERVICES

## NOTICE OF ADOPTED AMENDMENTS

TITLE 89: SOCIAL SERVICES  
CHAPTER IV: DEPARTMENT OF HUMAN SERVICES  
SUBCHAPTER a: GENERAL PROGRAM PROVISIONS

PART 50  
CHILD CARE

## SUBPART A: GENERAL PROVISIONS

Section  
50.101 Incorporation by Reference  
50.110 Participant Rights and Responsibilities  
50.120 Notification of Available Services  
50.130 Child Care Overpayments and Recoveries

## SUBPART B: APPLICABILITY

Section  
50.210 Child Care  
50.220 Method of Providing Child Care  
50.230 Child Care Eligibility  
50.235 Income Eligibility Criteria  
50.240 Qualified Provider  
50.250 Additional Service to Secure or Maintain Child Care

## SUBPART C: PAYMENT FEES

Section  
50.310 Fees for Child Care Services  
50.320 Maximum Annual Income and Parent Fee by Family Size, Income Level and Number of Children Receiving Care

AUTHORITY: Implementing Articles I through IX and authorized by Section 12-13 of the Illinois Public Aid Code [305 ILCS 5/Arts. I through IX and 12-13].

SOURCE: Emergency rules adopted at 21 Ill. Reg. 9502, effective July 1, 1997, for a maximum of 150 days; adopted at 21 Ill. Reg. 14961, effective November 10, 1997; emergency amendment at 22 Ill. Reg. 12816, effective July 1, 1998, for a maximum of 150 days; amended at 22 Ill. Reg. 21037, effective

NOV 27 1998

## SUBPART B: APPLICABILITY

## Section 50.230 Child Care Eligibility

- a) Child care services are restricted to children under age 13 and to children under age 20 who are under court supervision or have physical or mental incapacities as documented by a statement from a local

## DEPARTMENT OF HUMAN SERVICES

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health provider or other health professional.

- b) Parents and other relatives eligible to receive child care services include:

- 1) Recipients of Temporary Assistance for Needy Families (TANF) under Article IV of the Public Aid Code participating in work and training activities as specified in their personal plans for employment and self-sufficiency who have been approved for child care benefits by the Department and who meet the annual income ceilings in subsection (b)(2) of this Section.
- 2) Working families, including teen parents while they attend school to obtain a high school degree or its equivalent, whose annual incomes do not exceed the following amounts by family size:

Family Size	Annual Income
2	\$17,663
3	\$21,819
4	\$25,975
5	\$30,131
6	\$34,288
7	\$35,067
8	\$35,846

- 3) Subject to an annual allocation of \$7.5 million, families ~~Families~~ who do not receive TANF and need ~~are--receiving~~ child care services ~~on-duty-17-1997~~ in order to work or attend school (up to and including the acquisition of a Bachelor's degree) and whose annual incomes do not exceed the annual income ceilings in subsection (b)(2) of this Section, provided the parent works 25 hours per week in a paying job. Effective October 1, 1999, the parent must work 30 hours per week in a paying job. No parent can receive more than two years of service under this subsection, including any child care received for training under the "grandfather" provision during FY 1998. Child care provided to a teen parent to obtain a high school degree, or its equivalent, does not count against this two year limit. Eligibility for child care under this subsection ceases for any month in which the parent does not work 25 hours per week in a paying job. Effective October 1, 1999, eligibility for child care under this subsection ceases for any month in which the parent does not work 30 hours per week in a paying job. If a parent is claimed as a dependent by another person for federal income tax purposes, that parent is only eligible if his or her income when added to the income of the other person does not exceed the annual income ceiling in subsection (b)(2) of this Section for that family size. Applications to receive child care under this subsection will be denied when the projected annual costs for enrolled participants reaches \$7.5 million, following amounts-by-family

## DEPARTMENT OF HUMAN SERVICES

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size:

Family-Size	Annual-income
2	\$21,7294
3	\$26,7290
4	\$31,7266
5	\$36,7223
6	\$41,7210
7	\$42,7155
8	\$43,7092

~~Such-families-are-eligible-to-receive-these-services-through-June-30-1998-at-which-point-they-must-be-eligible-under-subsection (b)(1)-or-(2)-of-this-Section-to-receive-services~~

- c) All families must be residents of Illinois.
- d) Payment for child care services to eligible parents may begin on the first day of the month before the month in which the application is received by the Department or its agents.
- e) Eligibility ceases 10 calendar days from the date of the termination notice sent to the parent by the Department or its agents following a determination of ineligibility.

(Source: Amended at 22 Ill. Reg. 21037, effective NOV 27 1998)

## Section 50.235 Income Eligibility Criteria

A family is considered "income eligible" when the combined gross monthly income of all family members is at or below the amounts listed in Section 50.230 for the corresponding family size. In two parent families, both incomes must be combined to determine eligibility.

Eligibility is determined on the basis of monthly gross income. To convert weekly income into monthly income, multiply weekly income by 4.333. To convert bi-weekly income into monthly income, multiply bi-weekly income by 2.1666. To convert twice monthly income into monthly income, multiply twice monthly income by 2.

Documentation must be secured for all income and maintained in the family eligibility file prior to approval for child care payments.

- a) Income Included (Non-Exempt)
  - 1) gross money wages and salary minus 10% before deductions-are made-for-taxes-bonds-pensions-union-dues-etc-77
  - Note:--This-would-include-any-money-allowances-received-for-clothing-housing-etc--as-in-government-wage-77
  - 2) net income from farm self-employment;
  - 3) net income from non-farm self-employment;
  - 4) dividends, interest, net rental income and royalties;
  - 5) pensions and annuities;



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- 6) alimony;
  - 7) child support received by the family;
  - 8) ongoing monthly adoption assistance payments from DCFs;
  - 9) veteran's pensions;
  - 10) unemployment compensation;
  - 11) worker's compensation;
  - 12) public assistance and welfare payments;
  - 13) social security payments for all family members, including SSI and pensions;
  - 14) survivor's benefits, permanent disability payments, and railroad retirement benefits from the federal government.
- b) Exempt Income
- 1) per capita payments to or funds held in trust for any individual in satisfaction of the Indian Claims Commission or the Court of Claims;
  - 2) payments made pursuant to the Alaska Native Claims Settlement Act to the extent such payments are exempt from taxation under Section 21(a) of the Act (43 USC 1620(a));
  - 3) money received from sale of property, such as stocks, bonds, a house, or a car (unless the person was engaged in the business of selling such property, in which case the net proceeds would be counted as income from self-employment);
  - 4) money borrowed, including educational loans to a student who is included in the family unit as authorized in Section 50.210(c);
  - 5) withdrawals of bank deposits;
  - 6) tax refunds, or any Earned Income Tax Credit payments;
  - 7) gifts;
  - 8) lump sum inheritances or insurance payments;
  - 9) capital gains;
  - 10) the value of the coupon allotment or food stamp benefits under the Food Stamp Act of 1977, as amended;
  - 11) the value of United States Department of Agriculture (USDA) donated foods;
  - 12) the value of supplemental food assistance under the Child Nutrition Act of 1966 and the special food service for children under the National School Lunch Act, as amended;
  - 13) any payment received under the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970;
  - 14) earnings of a child under age 19 (unless that child is the applicant);
  - 15) grants such as scholarships, obtained and used by a student who is included in the family unit as authorized in Section 50.210(c) under conditions that preclude their use for current living costs;
  - 16) any grant or loan to any undergraduate student for educational purposes made or insured under any program administered by the Commission of Education under the Higher Education Act of 1965;
  - 17) home produce utilized for household consumption;

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## NOTICE OF ADOPTED AMENDMENTS

- 18) energy grants or allowances received through the Low-Income Energy Assistance Program authorized by the Home Energy Assistance Act of 1980;
- 19) any DCFS foster care board payments or clothing allowance;
- 20) child support paid out of the family's income.

(Source: Amended at 22 Ill. Reg. 21037, effective NOV 24 1998)

## SUBPART C: PAYMENT FEES

## Section 50.310 Fees for Child Care Services

All parents must share in the cost of child care as illustrated in Section 50.320. If care is for less than 5 hours per day, the parent share is 50% of the amount shown, rounded up to the nearest cent. These parent fees will be explained to parents beginning in July 1997 and will be collected beginning in October 1997.

(Source: Amended at 22 Ill. Reg. 21037, effective NOV 24 1998)

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- 1) Heading of the Part: Information to be Submitted in a Compost Facility Permit Application
- 2) Code Citation: 35 Ill. Adm. Code 831
- 3) Section Numbers:  
831.107 Adopted Action:  
831.109 Amended  
Amended
- 4) Statutory Authority: 415 ILCS 5/21, 27, 28 and 39
- 5) Effective Date of Amendments: November 23, 1998
- 6) Does this rulemaking contain an automatic repeal date? No
- 7) Do these amendments contain incorporations by reference? No
- 8) The adopted amendments, including any material incorporated by reference, are on file in the Board's Chicago office and are available for public inspection and copying.
- 9) Notice of Proposal Published in Illinois Register: July 6, 1998, 22 Ill. Reg. 11361
- 10) Has JCAR issued a Statement of Objections to these rules? No
- 11) Differences between proposal and final version:  
In the introductory phrase of Section 831.107, made the following changes: ("USGS").  
In subsections (c), (f) and (g) of Section 831.107, made the following changes: "USC 8-S-6".  
In Section 831.107(1), added ", the property line of which is" after "following".  
In Section 831.107(1)(1), replaced "health care facilities" with "Facilities that primarily serve to house or treat people that are immunocompromised or immunosuppressed, such as cancer or AIDS patients; people with asthma. cystic fibrosis, or bioaerosol allergies; or children under the age of one year".  
In Section 831.107(1)(2), capitalized "primary" and replaced "their associated recreational areas" with "adjacent areas that the school uses for recreation".  
In Section 831.107(1)(3), replaced "pre-school and child care facilities

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- and their associated recreational areas" with "Any facility for child care licensed under Section 3 of the Child Care Act of 1969 [225 ILCS 10/3]; preschools; and adjacent areas that the facility or preschool uses for recreation".
- In Section 831.109(b)(3), added "the property line of" after "January 1, 1999, the composting area is located at least 1/8 mile from".
- In Section 831.109(b)(3)(A), replaced "health care facilities" with "Facilities that primarily serve to house or treat people that are immunocompromised or immunosuppressed, such as cancer or AIDS patients; people with asthma, cystic fibrosis, or bioaerosol allergies; or children under the age of one year".
- In Section 831.109(b)(3)(B), capitalized "primary" and replaced "their associated recreational areas" with "adjacent areas that the school uses for recreation".
- In Section 831.109(b)(3)(C), replaced "pre-school and child care facilities and their associated recreational areas" with "Any facility for child care licensed under Section 3 of the Child Care Act of 1969 [225 ILCS 10/3]; preschools; and adjacent areas that the facility or preschool uses for recreation".
- 12) Have all the changes agreed upon by the agency and JCAR been made as indicated in the agreements issued by JCAR? Yes
- 13) Will these amendments replace an emergency rule currently in effect? No
- 14) Are there any amendments pending on this Part? No
- 15) Summary and Purpose of Amendments: For a more detailed discussion of the amendments, please refer to the Illinois Pollution Control Board's opinion and order at first notice (June 17, 1998), its opinion and order at second notice (October 1, 1998), and its final opinion and order (November 19, 1998). Copies of these opinions and orders may be obtained as described below.  
Concerned citizens initiated this rulemaking, which has resulted in amendments to 35 Ill. Adm. Code 830 and 831. After hearings, the Board found that airborne spores of the fungus *Aspergillus fumigatus* (A. fumigatus) from compost facilities may occur at levels above its background concentration in nearby, downwind, off-site areas. A. fumigatus spores pose a potential health threat to very young children and persons with asthma, cystic fibrosis, immunocompromised or immunosuppressed conditions, or bioaerosol allergies. In response, the Board adopted setbacks designed to minimize the potential health threat posed by these fungal spores. The Board adopted the setbacks as a

## POLLUTION CONTROL BOARD

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precaution and in accordance with the recommendations of public health experts, including the Illinois Department of Public Health.

The Board amended 35 Ill. Adm. Code 830.203 so that the 1/8 mile setback from composting areas applied for residences extends to the following: (1) facilities that primarily serve to house or treat people that are immunocompromised or immunosuppressed, such as cancer or AIDS patients; people with asthma, cystic fibrosis, or bioaerosol allergies; or children under the age of one year; (2) primary and secondary schools and adjacent areas that the school uses for recreation; and (3) any facility for child care licensed under Section 3 of the Child Care Act of 1969 [225 ILCS 10/3]; preschools; and adjacent areas that the facility or preschool uses for recreation. The new setback requirements apply only to a compost facility that is developed, or the permitted composting area of which is expanded, after January 1, 1999.

The policy objectives of the amendments to Section 830.203 are furthered by the amendments to the permit application requirements at 35 Ill. Adm. Code 831.107 and 831.109(b)(3). New or expanded facilities required to have a permit must submit additional information in the permit application to demonstrate compliance with the new setbacks. Section 831.107 requires that permit applications contain a site location map showing certain items. The Board added a requirement that this map also reflect any of the additional facilities, the property line of which is within 1/8 mile of the nearest edge of the composting area. Section 831.109 requires that permit applications contain various information, including proof that the facility complies with location standards. The Board added a requirement that this information include proof of compliance with the new 1/8 mile setbacks.

Only facilities required to have a permit are affected by the amendments to the permit application requirements. The amendments to the permit application requirements do not apply to on-site facilities, on-site commercial facilities, garden compost operations, or on-farm landscape waste compost facilities.

- 16) Information and questions regarding these adopted amendments shall be directed to:

Richard R. McGill, Jr., Attorney  
Illinois Pollution Control Board  
100 W. Randolph Street  
Suite 11-500  
Chicago, IL 60601  
312/814-6983

Requests for copies of any of the Illinois Pollution Control Board's opinions and orders in R97-29 should be directed to Victoria Agyeman at

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312/814-3620 or at the above address and should refer to docket R97-29.

The full text of the Adopted Amendments begins on the next page:



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## TITLE 35: ENVIRONMENTAL PROTECTION

## SUBTITLE G: WASTE DISPOSAL

## CHAPTER I: POLLUTION CONTROL BOARD

## SUBCHAPTER I: SOLID WASTE AND SPECIAL WASTE HAULING

## PART 831

## INFORMATION TO BE SUBMITTED IN A COMPOST FACILITY PERMIT APPLICATION

SUBPART A: GENERAL INFORMATION REQUIRED FOR  
ALL COMPOST FACILITIES

Section	
831.101	Scope and Applicability
831.102	Severability
831.103	Certification by Professional Engineer
831.104	Application Fees
831.105	Required Signatures
831.106	Site Identification
831.107	Site Location Map
831.108	Site Plan Map
831.109	Narrative Description of the Facility
831.110	Legal Description
831.111	Proof of Land Ownership and Certification
831.112	Closure Plan
831.113	Financial Assurance
831.114	Operator-Initiated Modification of an Approved Permit
831.115	Modification to Obtain Operating Authorization
831.116	Permit Renewal

AUTHORITY: Implementing Sections 5, 21, 22.33, 22.34, 22.35 and 39 and authorized by Section 27 of the Environmental Protection Act [415 ILCS 5/5, 21, 22.33, 22.34, 22.35, 27 and 39].

BOARD NOTE: This Part implements the Illinois Environmental Protection Act as of July 1, 1994.

SOURCE: Adopted at 18 Ill. Reg. 16942, effective November 30, 1994; amended at 22 Ill. Reg. 21044, effective NOV 23 1998.

SUBPART A: GENERAL INFORMATION REQUIRED FOR  
ALL COMPOST FACILITIES

## Section 831.107 Site Location Map

All permit applications shall contain a site location map on the most recent United States Geological Survey (USGS) quadrangle of the area from the 7 1/2 minute series (topographic), or on such other map whose scale clearly shows the following information:

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- a) The permit area and all adjacent property, extending at least 1/2 mile beyond the boundary of the facility;
- b) The prevailing wind direction;
- c) All rivers designated for protection under the Wild and Scenic Rivers Act (16 USC 8-5-e- 127 et seq.);
- d) The limits of all 10-year floodplains;
- e) All natural areas designated as a Dedicated Illinois Nature Preserve pursuant to the Illinois Natural Areas Preservation Act (525 ILCS 30);
- f) All historic and archaeological sites designated by the National Historic Preservation Act (16 USC 8-5-e- 470 et seq.) and the Illinois Historic Preservation Act (20 ILCS 3410);
- g) All areas identified as a critical habitat pursuant to the Endangered Species Act (16 USC 8-5-e- 1531 et seq.) and the Illinois Endangered Species Protection Act (520 ILCS 10);
- h) All main service corridors, transportation routes, and access roads to the facility;
- i) All residences and areas in which people congregate within 1/2 mile of the facility boundaries;
- j) The locations of all on-site potable water supply wells and all potable water supply wells within 1/8 mile of the boundaries of the facility; and
- k) The types of land use for the properties immediately adjacent to the facility (i.e., residential, commercial, industrial, agricultural, etc.). This must include any zoning classifications of these properties and the location (and function) of all buildings within 1/2 mile of the facility; and
- l) In the case of a facility that is developed or the permitted composting area of which is expanded after January 1, 1999, all of the following, the property line of which is within 1/8 mile of the nearest edge of the composting area:
  - 1) Facilities that primarily serve to house or treat people that are immunocompromised or immunosuppressed, such as cancer or AIDS patients; people with asthma, cystic fibrosis, or bioerosol allergies; or children under the age of one year;
  - 2) Primary and secondary schools and adjacent areas that the school uses for recreation; and
  - 3) Any facility for child care licensed under Section 3 of the Child Care Act of 1969 [225 ILCS 10/3]; preschools; and adjacent areas that the facility or preschool uses for recreation.

(Source: Amended at 22 Ill. Reg. 21044, effective NOV 23 1998 )

## Section 831.109 Narrative Description of the Facility

The permit application must contain a written description of the facility with supporting documentation describing the procedures and plans that will be used at the facility to comply with the requirements of this Part and any other

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applicable Parts of 35 Ill. Adm. Code: Chapter I. Such description must include, but not be limited to, the following information:

- a) An estimate of the maximum annual volume and peak daily volume of landscape waste the facility will be able to process;
- b) Proof of the following:

- 1) The facility includes a setback of at least 200 feet from the nearest potable water supply well;
- 2) The facility is located outside the boundary of the 10-year floodplain or the site will be floodproofed;
- 3) The facility is located so as to minimize incompatibility with the character of the surrounding area, including at least a 200 foot setback from any residence and in the case of a facility that is developed or the permitted composting area of which is expanded after November 17, 1991 the composting area is located at least 1/8 mile from the nearest residence (other than a residence located on the same property as the facility). In addition, in the case of a facility that is developed or the permitted composting area of which is expanded after January 1, 1999, the composting area is located at least 1/8 mile from the property line of each of the following:

A) Facilities that primarily serve to house or treat people that are immunocompromised or immunosuppressed, such as cancer or AIDS patients; people with asthma, cystic fibrosis, or bioaerosol allergies; or children under the age of one year;

B) Primary and secondary schools and adjacent areas that the school uses for recreation; and

C) Any facility for child care licensed under Section 3 of the Child Care Act of 1969 [225 ILCS 10/3]; preschools; and adjacent areas that the facility or preschool uses for recreation; and

4) The design of the facility will prevent any compost material from being placed within 5 feet of the water table, will adequately control runoff from the site, and will collect and manage any leachate that is generated on the site (Section 39(m) of the Act);

c) An operating plan, satisfying the requirements set forth in 35 Ill. Adm. Code 830.206;

d) An early detection or groundwater monitoring system design, in accordance with 35 Ill. Adm. Code 830.205(b)(1)(A)(iii) or 830.205(b)(2)(A)(iii);

e) A contingency plan, satisfying the requirements set forth in 35 Ill. Adm. Code 830.212;

f) Specification of the operating hours of the facility;

g) The types of landscape waste that are proposed to be received by the facility;

h) Descriptions of the storage areas (including their capacities) that will be used to stage the waste before windrowing, to store bulking

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agent(s) or additives and to store the end-product compost; and  
i) Description of personnel training procedures, satisfying the requirements of 35 Ill. Adm. Code 830.210.

(Source: Amended at 22 Ill. Reg. effective  
NOV 23 1998 21044)

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- 1) Heading of the Part: Standards for Compost Facilities
- 2) Code Citation: 35 Ill. Adm. Code 830
- 3) Section Numbers: Adopted Action:  
830.203 Amended
- 4) Statutory Authority: 415 ILCS 5/21, 27, 28 and 39
- 5) Effective Date of Amendments: November 23, 1998
- 6) Does this rulemaking contain an automatic repeal date? No
- 7) Do these amendments contain incorporations by reference? No
- 8) A copy of the adopted amendment, including any material incorporated by reference, is on file in the agency's principal office and is available for public inspection.
- 9) Notice of Proposal Published in Illinois Register: July 6, 1998, 22 Ill. Reg. 11367
- 10) Has JCAR issued a Statement of Objections to these rules? No
- 11) Differences between proposal and final version: In the Note, added "unless the context clearly indicates otherwise," after "Part,".  
In Section 830.203, designated the introductory phrase as subsection (a).  
In Section 830.203(a), designated subsection (a) as subsection (a)(1) and deleted the period after "Act".  
In Section 830.203(b), designated subsection (b) as subsection (a)(2) and deleted the period after "Act".  
In Section 830.203(c), designated subsection (c) as subsection (a)(3) and deleted the period after "Act".  
In Section 830.203(c), added "the property line of" after "January 1, 1999, the composting area shall be located at least 1/8 mile from".  
In Section 830.203(c)(1), designated subsection (c)(1) as subsection (a)(3)(A) and replaced "health care facilities" with "Facilities that primarily serve to house or treat people that are immunocompromised or immunosuppressed, such as cancer or AIDS patients; people with asthma, cystic fibrosis, or bioaerosol allergies; or children under the age of one year".

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- In Section 830.203(c)(2), designated subsection (c)(2) as subsection (a)(3)(B), capitalized "primary" and replaced "their associated recreational areas" with "adjacent areas that the school uses for recreation".
- In Section 830.203(c)(3), replaced "pre-school and child care facilities and their associated recreational areas" with "Any facility for child care licensed under Section 3 of the Child Care Act of 1969 [225 ILCS 10/3]; preschools; and adjacent areas that the facility or preschool uses for recreation".
- In Section 830.203(d), designated subsection (d) as subsection (a)(4).
- In Section 830.203(e), designated subsection (e) as subsection (a)(5) and deleted the period after "Act".
- In Section 830.203(e)(1), designated subsection (e)(1) as subsection (a)(5)(A) (a)(5)(B).
- In Section 830.203(e)(2), designated subsection (e)(2) as subsection (a)(5)(B).
- In Section 830.203(f), designated subsection (f) as subsection (a)(6) and made the following changes: "USC 8-6-".
- In Section 830.203(g), designated subsection (g) as subsection (a)(7).
- In Section 830.203(h), designated subsection (h) as subsection (a)(8).
- In Section 830.203(h)(1), designated subsection (h)(1) as subsection (a)(8)(A) and made the following changes: "USC 8-6-".
- In Section 830.203(h)(2), designated subsection (h)(2) as subsection (a)(8)(B).
- In Section 830.203(h)(3), designated subsection (h)(3) as subsection (a)(8)(C).
- In Section 830.203(i), designated subsection (i) as subsection (a)(9) and made the following changes: "USC 8-6- 1531 et. seq.)".
- In Section 830.203, added a new subsection (b) as follows:
- "A facility's compliance with the location standards set forth in subsection (a) of this Section shall be determined at the time described below:
- 1) For a facility that is required to obtain a permit under Section 21(d)



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of the Act, at the time that a complete permit application for a new or expanded facility is filed with the Agency under 35 Ill. Adm. Code 832; or

- 2) For a facility that is not required to obtain a permit under Section 21(d) of the Act, at the time that construction of the new or expanded facility begins."

- 12) Have all the changes agreed upon by the agency and JCAR been made as indicated in the agreements issued by JCAR? Yes

- 13) Will these amendments replace an emergency rule currently in effect? No

- 14) Are there any amendments pending on this Part? No

- 15) Summary and Purpose of Amendments: For a more detailed discussion of the amendments, please refer to the Illinois Pollution Control Board's opinion and order at first notice (June 17, 1998), its opinion and order at second notice (October 1, 1998), and its final opinion and order (November 19, 1998). Copies of these opinions and orders may be obtained as described below.

Concerned citizens initiated this rulemaking, which has resulted in amendments to 35 Ill. Adm. Code 830 and 831. After hearings, the Board found that airborne spores of the fungus *Aspergillus fumigatus* (A. *fumigatus*) from compost facilities may occur at levels above its background concentration in nearby, downwind, off-site areas. A. *fumigatus* spores pose a potential health threat to very young children and persons with asthma, cystic fibrosis, immunocompromised or immunosuppressed conditions, or bioaerosol allergies. In response, the Board adopted setbacks designed to minimize the potential health threat posed by these fungal spores. The Board adopted the setbacks as a precaution and in accordance with the recommendations of public health experts, including the Illinois Department of Public Health.

Based on the presence of the susceptible individuals described above, the Board amended 35 Ill. Adm. Code 830.203 so that the 1/8 mile setback from composting areas, previously applicable only for residences, applies to: (1) facilities that primarily serve to house or treat people that are immunocompromised or immunosuppressed, such as cancer or AIDS patients; people with asthma, cystic fibrosis, or bioaerosol allergies; or children under the age of one year; (2) primary and secondary schools and adjacent areas that the school uses for recreation; and (3) any facility for child care licensed under Section 3 of the Child Care Act of 1969 [225 ILCS 10/3]; preschools; and adjacent areas that the facility or preschool uses for recreation. Compliance with the setback requirements is determined either at the time a complete permit application for a new or expanded facility is filed with the Illinois Environmental Protection Agency or,

## POLLUTION CONTROL BOARD

## NOTICE OF ADOPTED AMENDMENTS

for facilities that are not required to obtain a permit, at the time construction of the new or expanded facility begins.

The new setback requirements apply only to a compost facility that is developed, or the permitted composting area of which is expanded, after January 1, 1999. The amendments to Section 830.203 apply to on-site, on-site commercial, and permitted landscape waste compost facilities and do not apply to garden compost operations or on-farm landscape waste compost facilities. The Board also adopted corresponding changes to permit application requirements for site location maps (35 Ill. Adm. Code 831.107) and other information (35 Ill. Adm. Code 831.109(b)(3)).

- 16) Information and questions regarding these adopted amendments shall be directed to:

Richard R. McGill, Jr., Attorney  
Illinois Pollution Control Board  
100 W. Randolph Street  
Suite 11-500  
Chicago, IL 60601  
312/814-6983

Requests for copies of any of the Illinois Pollution Control Board's opinions and orders in R97-29 should be directed to Victoria Agreman at 312/814-3620 or at the above address and should refer to docket R97-29.

The full text of the Adopted Amendments begins on the next page:

## POLLUTION CONTROL BOARD

## NOTICE OF ADOPTED AMENDMENTS

## TITLE 35: ENVIRONMENTAL PROTECTION

## SUBTITLE G: WASTE DISPOSAL

## CHAPTER I: POLLUTION CONTROL BOARD

## SUBCHAPTER i: SOLID WASTE AND SPECIAL WASTE HAULING

## PART 830

## STANDARDS FOR COMPOST FACILITIES

## SUBPART A: GENERAL PROVISIONS

Section  
830.101  
830.102  
830.103  
830.104  
830.105  
830.106  
830.107  
830.108

Purpose, Scope and Applicability  
Definitions  
Incorporations by Reference  
Exempt Operations and Activities  
Permit-Exempt Facilities and Activities  
On-Farm Landscape Waste Compost Facility  
Compliance Dates  
Severability

## SUBPART B: STANDARDS FOR OWNERS AND OPERATORS OF LANDSCAPE WASTE COMPOST FACILITIES

Section  
830.201  
830.202  
830.203  
830.204  
830.205

Scope and Applicability  
Minimum Performance Standards and Reporting Requirements for Landscape Waste Compost Facilities  
Location Standards for Landscape Waste Compost Facilities  
Additional Stormwater and Landscape Waste Leachate Controls at Permitted Landscape Waste Compost Facilities  
Additional Operating Standards for Permitted Landscape Waste Compost Facilities

830.206 Operating Plan for Permitted Landscape Waste Compost Facilities  
830.207 Salvaging at Permitted Landscape Waste Compost Facilities  
830.208 Access Control at Permitted Landscape Waste Compost Facilities  
830.209 Load Checking at Permitted Landscape Waste Compost Facilities  
830.210 Personnel Training for Permitted Landscape Waste Compost Facilities  
830.211 Recordkeeping for Permitted Landscape Waste Compost Facilities  
830.212 Contingency Plan for Permitted Landscape Waste Compost Facilities  
830.213 Closure Plan for Permitted Landscape Waste Compost Facilities

## SUBPART E: QUALITY OF END-PRODUCT COMPOST

Section  
830.501  
830.502  
830.503

Scope and Applicability  
Compost Classes  
Performance Standards for General Use Compost

## POLLUTION CONTROL BOARD

## NOTICE OF ADOPTED AMENDMENTS

## 830.504 Testing Requirements for End-Product Compost Derived from Landscape Waste

## 830.507 Sampling Methods

## 830.508 Off-Specification Compost

## SUBPART F: FINANCIAL ASSURANCE

Section  
830.601  
830.602  
830.603  
830.604  
830.605  
830.606  
APPENDIX A  
APPENDIX B  
TABLE A  
TABLE B  
TABLE C

Scope and Applicability  
Financial Assurance Plan  
Written Cost Estimate  
Financial Assurance Fund  
Financial Assurance Mechanism  
Financial Assurance Certification  
Early Detection and Groundwater Monitoring Program  
Performance Test Methods  
Inorganic Concentration Limits for General Use Compost  
Sampling and Handling Requirements  
Seed Germination Record Sheet

AUTHORITY: Implementing Sections 5, 21, 22.33, 22.34, 22.35 and 39 and authorized by Section 27 of the Environmental Protection Act [415 ILCS 5/5, 21, 22.33, 22.34, 22.35, 27 and 39].

SOURCE: Adopted at 18<sup>th</sup> Ill. Reg. 17017, effective November 15, 1994; amended in R97-29 at 22 Ill. Reg. 21056, effective NOV 29 1998.

BOARD NOTE: This Part implements the Illinois Environmental Protection Act as of July 1, 1994.

NOTE: In this Part, unless the context clearly indicates otherwise, superscript numbers or letters are denoted by parentheses; subscript are denoted by brackets.

## SUBPART B: STANDARDS FOR OWNERS AND OPERATORS OF LANDSCAPE WASTE COMPOST FACILITIES

## Section 830.203 Location Standards for Landscape Waste Compost Facilities

a) With the exception of on-farm landscape waste operations, all landscape waste compost facilities subject to this Part shall comply with the following:

- 1)a) The composting area of the facility must include a setback of at least 200 feet from the nearest potable water supply well.  
(Section 39(m) of the Act.)
- 2)b) The composting area of the facility must be located outside the boundary of the 10-year floodplain or the site shall be floodproofed. (Section 39(m) of the Act.)

## POLLUTION CONTROL BOARD

## NOTICE OF ADOPTED AMENDMENTS

3)† The composting area of the facility must be located so as to minimize incompatibility with the character of the surrounding area, including at least a 200 foot setback from any residence, and in the case of a facility that is developed or the permitted composting area of which is expanded after November 17, 1991, the composting area shall be located at least 1/8 mile from the nearest residence (other than a residence located on the same property as the facility). (Section 39(m) of the Act.) In addition, in the case of a facility that is developed or the permitted composting area of which is expanded after January 1, 1999, the composting area shall be located at least 1/8 mile from the property line of each of the following:

A) Facilities that primarily serve to house or treat people that are immunocompromised or immunosuppressed, such as cancer or AIDS patients; people with asthma, cystic fibrosis, or bioaerosol allergies; or children under the age of one year;

B) Primary and secondary schools and adjacent areas that the school uses for recreation; and

C) Any facility for child care licensed under Section 3 of the Child Care Act of 1969 (225 ILCS 10/3); preschools; and adjacent areas that the facility or preschool uses for recreation.

4)† If, at the time the facility permit application is deemed complete by the Agency pursuant to 35 Ill. Adm. Code 832, the composting area of the facility is located within 1/4 mile of the nearest off-site residence or within 1/2 mile of the nearest platted subdivision containing a residence, or if more than 10 residences are located within 1/2 mile of the boundaries of the facility, in order to minimize incompatibility with the character of the surrounding area, landscape waste must be processed by the end of the operating day on which the landscape waste is received into windrows, other piles or a contained composting system providing proper conditions for composting.

5)† The composting area of the facility must be designed to prevent any compost material from being placed within 5 feet of the water table, to adequately control runoff from the site, and to collect and manage any landscape waste leachate that is generated on the site. (Section 39(m) of the Act.) Compliance with the water table distance requirement may be demonstrated by either of the following means:

A)† Using published water table maps or other published documentation to establish the location of the water table in relation to site elevation; or

B)† Actual measuring of the water table elevation at least once per month for three consecutive months.

6)† The facility must meet all requirements under the Wild and Scenic Rivers Act (16 USC 8-9-6- 1271 et seq.).

## POLLUTION CONTROL BOARD

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7)† The facility must not restrict the flow of a 100-year flood, result in washout of landscape waste from a 100-year flood, or reduce the temporary water storage capacity of the 100-year floodplain, unless measures are undertaken to provide alternative storage capacity, such as lagoons, holding tanks, or provision of drainage around structures at the facility.

8)† The facility must not be located in any area where it may pose a threat of harm or destruction to the features for which:

A)† An irreplaceable historic or archaeological site has been listed pursuant to the National Historic Preservation Act (16 USC 8-9-6- 470 et seq.) or the Illinois Historic Preservation Act [20 ILCS 3410];

B)† A natural landmark has been designated by the National Park Service or the Illinois State Historic Preservation Office; or

C)† A natural area has been designated as a Dedicated Illinois Nature Preserve pursuant to the Illinois Natural Areas Preservation Act [525 ILCS 30].

9)† The facility must not be located in any area where it may jeopardize the continued existence of any designated endangered species, result in the destruction or adverse modification of the critical habitat for such species, or cause or contribute to the taking of any endangered or threatened species of plant, fish or wildlife listed pursuant to the Endangered Species Act (16 USC 8-9-6- 1531 et seq.) or the Illinois Endangered Species Protection Act [520 ILCS 10].

b) A facility's compliance with the location standards set forth in subsection (a) of this Section shall be determined at the time described below:

1) For a facility that is required to obtain a permit under Section 21(d) of the Act, at the time that a complete permit application for a new or expanded facility is filed with the Agency under 35 Ill. Adm. Code 832; or

2) For a facility that is not required to obtain a permit under Section 21(d) of the Act, at the time that construction of the new or expanded facility begins.

(Source: Amended 22 Ill. Reg. 21052, effective NOV 23 1998)



## DEPARTMENT OF TRANSPORTATION

## NOTICE OF ADOPTED RULES

1) Heading of the Part: Contract Procurement

2) Code Citation: 44 Ill. Adm. Code 660

3) Section Numbers: Adopted Action:

660.10 New Section  
 660.20 New Section  
 660.30 New Section  
 660.40 New Section  
 660.50 New Section  
 660.60 New Section  
 660.70 New Section  
 660.80 New Section  
 660.90 New Section  
 660.100 New Section  
 660.110 New Section  
 660.120 New Section  
 660.130 New Section  
 660.140 New Section  
 660.150 New Section  
 660.160 New Section  
 660.170 New Section  
 660.180 New Section  
 660.190 New Section  
 660.200 New Section  
 660.210 New Section  
 660.220 New Section  
 660.230 New Section  
 660.240 New Section  
 660.250 New Section  
 660.260 New Section  
 660.270 New Section  
 660.280 New Section  
 660.290 New Section  
 660.300 New Section  
 660.310 New Section  
 660.320 New Section  
 660.330 New Section  
 660.340 New Section  
 660.350 New Section  
 660.360 New Section  
 660.370 New Section  
 660.380 New Section  
 660.390 New Section  
 660.400 New Section  
 660.410 New Section  
 660.420 New Section  
 660.430 New Section

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660.440 New Section  
 660.450 New Section  
 660.460 New Section  
 660.470 New Section  
 660.480 New Section  
 660.490 New Section  
 660.500 New Section  
 660.510 New Section  
 660.520 New Section  
 660.530 New Section  
 660.540 New Section  
 660.550 New Section  
 660.560 New Section  
 660.570 New Section  
 660.580 New Section  
 660.590 New Section  
 660.600 New Section  
 660.610 New Section  
 660.620 New Section  
 660.630 New Section  
 660.640 New Section  
 660.650 New Section  
 660.660 New Section  
 660.670 New Section  
 660.680 New Section  
 660.690 New Section  
 660.700 New Section  
 660.710 New Section  
 660.720 New Section  
 660.730 New Section  
 660.740 New Section  
 660.750 New Section

4) Statutory Authority: Implementing, and authorized by Section 5-25 of the Illinois Procurement Code [30 ILCS 500].

5) Effective Date of Rules: November 25, 1998

6) Does this rulemaking contain an automatic repeal date? No

7) Does this rule contain incorporations by reference? No

8) A copy of the adopted rule, including any material incorporated by reference, is on file in the agency's principal office and is available for public inspection.

9) Notice of Proposal Published in Illinois Register:

DEPARTMENT OF TRANSPORTATION  
NOTICE OF ADOPTED RULES

June 5, 1998, 22 Ill. Reg. 9470

- 10) Has JCAR issued a Statement of Objections to these rules? Yes
- A) Statement of Objection: November 6, 1998, 22 Ill. Reg. 19667
- B) Agency Response: November 20, 1998, 22 Ill. Reg. 20426
- C) Date Agency Response Submitted for Approval to JCAR: November 9, 1998

11) Differences between proposal and final version:

Various grammatical corrections were made throughout the Part.

The following changes were made in agreement with JCAR:

At Section 660.100(c), (c)(1) and (c)(3), the Department revised provisions regarding change orders.

At Section 660.140(c) and (d), the Department added provisions addressing the minimum information and requirements each construction contract item will include, and deleted less comprehensive provisions previously used for this subject area. The Department expanded language in this Section by addressing additional topics such as payment schedules, time of completion/liquidated damages, performance bonds, preferences under Article 45 of the Code and the Prevailing Wage Act.

At Section 660.240, the Department inserted a provision regarding tie bids.

At Section 660.420(a), the Department revised the provisions regarding the filing of a protest.

At Section 660.440(d), the Department inserted a provision regarding a decision on a protest.

12) Have all the changes agreed upon by the Agency and JCAR been made as indicated in the agreements issued by JCAR? Yes

13) Will this rule replace a emergency rule currently in effect? Yes

14) Are there any amendments pending on this Part? No

15) Summary and Purpose of Rules: This rulemaking implements and applies the requirements contained in the Illinois Procurement Code, 30 ILCS 500, effective July 1, 1998, as they affect the contract procurement procedures of the Department.

DEPARTMENT OF TRANSPORTATION  
NOTICE OF ADOPTED RULES

16) Information and questions regarding this adopted rule shall be directed to:

Mr. Jon E. Tweedt  
Deputy Chief Counsel  
Illinois Department of Transportation  
2300 South Dirksen Parkway, Room 311  
Springfield, Illinois 62764  
(217) 782-3215

The full text of the Adopted Rules begins on the next page:

## DEPARTMENT OF TRANSPORTATION

## NOTICE OF ADOPTED RULES

TITLE 44: GOVERNMENT CONTRACTS, PROCUREMENT AND PROPERTY MANAGEMENT  
 SUBTITLE B: SUPPLEMENTAL PROCUREMENT RULES  
 CHAPTER IX: DEPARTMENT OF TRANSPORTATION

## PART 660

## CONTRACT PROCUREMENT

## SUBPART A: GENERAL

## Section

660.10 Authority

660.20 Policy

660.30 Purpose and Policy Interpretations

660.40 Definitions

## SUBPART B: PUBLICATION OF PROCUREMENT INFORMATION

## Section

660.50 Transportation Bulletin

660.60 Subscription Fees

660.70 Direct Solicitation

## SUBPART C: METHODS OF PROCUREMENT

## Section

660.80 Competitive Sealed Bids

660.90 Competitive Sealed Proposals

660.100 Small Contracts

660.110 Sole Source Contracts

660.120 Emergency Contracts

## SUBPART D: COMPETITIVE SEALED BID PROCEDURES

## Section

660.130 General Conditions for Use

660.140 Invitations for Bids

660.150 Amendments to Invitations for Bids

660.160 Preparation of Bids

660.170 Delivery of Bids

660.180 Change or Withdrawal of Bids

660.190 Combination Bids for Construction Contracts

660.200 Pre-Bid Conferences

660.210 Public Opening of Bids

660.220 Consideration of Bids

660.230 Mistakes

660.240 Award After Bid Evaluation

660.250 Split and Multiple Awards

## DEPARTMENT OF TRANSPORTATION

## NOTICE OF ADOPTED RULES

660.260 Time for Award  
 660.270 Delay in Award  
 660.280 Binding Contract  
 660.290 Requirement of Contract Bond for Construction Contracts  
 660.300 Execution of Contract  
 660.310 Publication of Contracts

## SUBPART E: COMPETITIVE SEALED PROPOSAL PROCEDURES

## Section

660.320 General Conditions for Use

660.330 Request for Proposals

660.340 Delivery of Proposals

660.350 Evaluation of Proposals

660.360 Discussions with Responsible Offerors

660.370 Award

660.380 Publication of Contracts

## SUBPART F: PROTESTS

## Section

660.390 Application

660.400 Interested Party

660.410 Subject of the Protest

660.420 Filing of a Protest

660.430 Stay of Action during Protest

660.440 Decision

## SUBPART G: SPECIFICATIONS

## Section

660.450 Standard Specifications

660.460 Contract Documents

660.470 Specification Standards

## SUBPART H: SUSPENSION OF CONTRACTORS

## Section

660.480 Purpose

660.490 Definitions

660.500 Policy

660.510 General

660.520 Causes for Suspension

660.530 Interim Suspension

660.540 Voluntary Exclusion

660.550 Term of Suspension

660.560 Coverage

660.570 Other Agency Suspensions



## DEPARTMENT OF TRANSPORTATION

## NOTICE OF ADOPTED RULES

660.580 Responsibility  
 660.590 Continuation of Executory Contracts  
 660.600 Exception Provision  
 660.610 Notice of Suspension  
 660.620 Response and Request for Hearing  
 660.630 Hearing Date and Hearing Officer  
 660.640 Answer  
 660.650 Form of Documents  
 660.660 Computation of Time  
 660.670 Appearances  
 660.680 Hearing Procedures  
 660.690 Determination

## SUBPART I: MISCELLANEOUS

Section  
 660.700 Property Rights  
 660.710 Federal Requirements  
 660.720 Intergovernmental Agreements  
 660.730 No Waiver of Sovereign Immunity  
 660.740 Written Determinations  
 660.750 Severability

AUTHORITY: Implementing, and authorized by Section 5-25 of, the Illinois Procurement Code [30 ILCS 500].

SOURCE: Adopted by emergency rulemaking at 22 Ill. Reg. 11602, effective July 1, 1998, for a maximum of 150 days; adopted at 22 Ill. Reg. ~~21060~~, effective NOV 25 1998.

## SUBPART A: GENERAL

## Section 660.10 Authority

a) The Secretary of Transportation is established in the Illinois Procurement Code (the Code) [30 ILCS 500] as the Chief Procurement Officer for all construction and construction-related services contract procurement, for procurement related to the operation of any facility under the jurisdiction of the Illinois Department of Transportation (the Department), and for the procurement of contracts necessary to the provision of any service or activity for which the Department is charged by law. The Secretary has the authority to appoint State Purchasing Officers to carry out the responsibility established in the Illinois Procurement Code. (See Section 1-15.15 of the Code.)

b) With respect to construction and construction-related services, the Department is charged by law with the responsibility for the construction, improvement, maintenance and operation of the State

## DEPARTMENT OF TRANSPORTATION

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Highway System; the rehabilitation, improvement and construction of rail facilities; and the construction, improvement and maintenance of air navigation facilities either on behalf of the State or as agent for units of local government empowered to operate air navigation facilities. In addition, the Department may let contracts for highway construction on highway systems under the jurisdiction of local highway authorities as a condition of the receipt of federal-aid funds or as otherwise provided by law.

c) Procurements undertaken in accordance with the authority of the Department and subject to the Code will be accomplished in accordance with this Part or the standard procurement rules adopted by the Department of Central Management Services as indicated in the notice of the relevant procurement. All other procurements subject to the Code and committed to the authority of other Chief Procurement Officers therein will be conducted in accordance with the rules adopted by those Chief Procurement Officers. Procurements subject to the Architectural, Engineering, and Land Surveying Qualifications Based Selection Act will be conducted, in all aspects and procedures, including but not limited to prequalification, publication, evaluation, selection, contract formation and amendment, and performance evaluation, in accordance with rules adopted by the Department pursuant to that Act.

## Section 660.20 Policy

All Department contract procurements will be accomplished in the most economic and expeditious manner consistent with the principles and practices established in the Code. It is the policy of the Secretary of Transportation, as Chief Procurement Officer for the Department, that all activities of appointed State Purchasing Officers and other designees related to the procurement process maximize the value of the expenditure of public funds in procuring contracts, and that those appointed and designated act in a manner that maintains public trust in the integrity of the process.

## Section 660.30 Purpose and Policy Interpretations

This Part is promulgated to guide the Department in implementing the procurement practices applicable to contract procurement established in the Code. All policy and operational interpretations will be made in a manner so as to secure the commercial needs of the State, to protect, safeguard and maintain the integrity of the procurement process, and to maximize the value of the expenditure of public funds. This Part is intended and designed to achieve practical, standard procedural uniformity for procurement undertaken by the Department.

## Section 660.40 Definitions

As used throughout this Part, terms defined in the Illinois Procurement Code

## DEPARTMENT OF TRANSPORTATION

## NOTICE OF ADOPTED RULES

have the same meaning as in the Code and as further defined below. Each term listed in this Section has the meaning set forth below unless its use clearly requires a different meaning. Terms may be defined in particular Sections for use in that Section.

"Bid" - An offer made by a bidder in response to a contract item advertised in an Invitation for Bids.

"Bidder" - Any person or entity that in fact submits a bid.

"Change Order" - A formal, written directive or agreement that amends a contract in order to address contingencies affecting the performance and completion of the contract, including but not limited to such matters as extra work, increases or decreases in quantities, additions or alterations to plans, special provisions or specifications, and adjustments or alterations specifically provided for in the contract.

"Code" - The Illinois Procurement Code [30 ILCS 500].

"Contract" - A written agreement between the Department and the contractor comprising such documents as set forth in each individual agreement, including change orders, and setting forth the obligations of the parties for the performance of the contract.

"Day" - A calendar day.

"Department" - The Illinois Department of Transportation.

"Germane" - In relationship to the modification, alteration or amendment of the terms of a contract by change order, the term "germane" means a change that is related to the original terms of the contract but that is not so substantial a departure from the original as to constitute a new contract.

"Proposal" - A response to a Request for Proposals.

"Responsible" - The capability, integrity and reliability of a bidder, offeror or contractor, in all respects that will assure good faith performance, to undertake and complete fully the requirements of a contract.

"Responsive" - In the context of bidding procedures, the compliance in all meaningful, material respects with the Invitation for Bids.

"Special Provisions" - Additions and revisions to the Standard and Supplemental Specifications applicable to an individual contract.

"Specifications" - The body of directions, provisions, and

## DEPARTMENT OF TRANSPORTATION

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requirements for performance of prescribed work. Specifications includes and may be referred to as the Standard Specifications, which is a Department publication of specifications approved for general application and repetitive use.

"Supplemental Specifications" - Additions and revisions to the Department's Standard Specifications.

## SUBPART B: PUBLICATION OF PROCUREMENT INFORMATION

## Section 660.50 Transportation Bulletin

- a) The Department is responsible under the Code for publication of its volume of the Illinois Procurement Bulletin. The Department volume is entitled the "Transportation Bulletin." (See Section 15-1 of the Code.)
- b) The Transportation Bulletin is the published source for all Department procurement actions, notices and other information relevant to Department procurement activities undertaken pursuant to this Part.
- c) The Transportation Bulletin may be published in subparts designed to enhance and focus the ability of users to find information relevant to the user's interest.
- d) The Transportation Bulletin or any subpart thereof will be published or updated at least once each month but may be updated more frequently.

## Section 660.60 Subscription Fees

The Department reserves the right to charge subscription fees in accordance with Section 15-15 of the Code. The Transportation Bulletin will be made available without charge to prequalified bidders and offerors, and to public libraries within Illinois expressing interest. Access to detailed information contained in the Transportation Bulletin or any subpart may require additional fees.

## Section 660.70 Direct Solicitation

Publication of the Transportation Bulletin or any subpart shall not prohibit direct solicitation in addition to publication in order to enhance competition or interest of prospective contractors in particular procurements.

## SUBPART C: METHODS OF PROCUREMENT

## Section 660.80 Competitive Sealed Bids

Except for those circumstances and methods described in Sections 660.90, 660.100, 660.110 and 660.120, all Department contracts will be procured by competitive sealed bidding in accordance with Section 20-10 of the Code and

## DEPARTMENT OF TRANSPORTATION

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this Part. (See Section 20-5 of the Code.)

## Section 660.90 Competitive Sealed Proposals

- a) Department contracts may be procured by competitive sealed proposals when the Department determines that competitive sealed bidding is either not practicable or not advantageous to the State. (See Section 20-15(a) of the Code.)
- b) The determination to use competitive sealed proposals will be made in writing on either a contract-by-contract or a category of contracts basis.

1) "Practicable" Distinguished From "Advantageous." As used in this Subpart, the term "practicable" means that which may be accomplished or put into practical application, and "advantageous" means an assessment of what is in the State's best interest. Competitive sealed bidding may be practicable, that is, reasonably possible, but not necessarily advantageous, that is, in the State's best interest. Before a contract may be entered into by competitive sealed proposals, the Department will determine in writing that competitive sealed bidding is either not practicable or not advantageous to the State.

2) If competitive sealed bidding is not practicable or is not advantageous, competitive sealed proposals may be used. The competitive sealed proposal method differs from competitive sealed bidding in two principal ways. First, it permits discussions with competing offerors and changes in their proposals, including price. Second, it allows comparative evaluations to be made when selecting among acceptable proposals for award of the contract. Where evaluation factors involve the relative abilities of offerors to perform, including degrees of experience or expertise, where the types of supplies or services may require the use of comparative evaluations to evaluate them adequately, or where the type of need to be satisfied involves weighing values other than price alone, or where prior procurement experience indicates that competitive sealed proposals may result in more beneficial contracts for the State, use of competitive sealed proposals is the appropriate procurement method.

- c) Contracts for professional and artistic services governed by the Competitive Selection Procedures adopted by the Illinois Department of Central Management Services are subject to those procedures for procurement.

## Section 660.100 Small Contracts

- a) Individual contracts for supplies or services from any one source that do not exceed \$10,000 may be made without notice, competition or use of any other method of procurement prescribed in the Code or this

## DEPARTMENT OF TRANSPORTATION

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Part. (See Section 20-20(a) of the Code.) Contracts for professional and artistic services that do not exceed \$20,000 for a nonrenewable term of not more than one year will be procured in accordance with this Section.

- b) Construction contracts, construction supply contracts, construction-related service contracts and change orders made thereto that do not exceed \$30,000 may be procured without notice, competition or use of any other method of procurement prescribed in the Code or this Part. (See Section 20-20 of the Code.)
- c) Section 30-35 of the Code provides that a construction contract change order may cause the obligation or expenditure of funds in excess of the original contract price provided that the subject of the change order is germane to the original contract. Section 30-35 of the Code further establishes the manner in which the amount of additional expenditure or obligation will be determined and authorized by the Department. The Department will approve construction contract change orders authorizing the obligation or expenditure of additional funds without supplemental procurement procedures, in accordance with the following requirements and thresholds.

1) A construction contract change order that is germane and that causes the obligation or expenditure in excess of the amounts in Section 30-35(b) of the Code or of more than \$30,000 in excess of the contract price, whichever is less, will not be authorized without supplemental procurement procedures unless the scope of the change order is approved as provided in Section 30-35 of the Code.

2) Determination of germaneness and the amount of additional expenditure or obligation thresholds will be determined in accordance with this Part and Section 30-35 of the Code.

3) Prior written approval or disapproval will be made by the Department in accordance with the threshold amounts established in Section 30-35 of the Code, and in all cases if the contemplated construction contract change order will cause an expenditure or obligation of funds of more than \$30,000 in excess of the contract price even though the threshold levels provided in Section 30-35 of the Code do not require such action. The written approval will state the reasons for the additional obligation or expenditure and the basis for the germaneness determination.

4) For purposes of determining the scope of the change order and the value thereof that is subject to the requirements of this Section, the Department will consider the total net value of all added and deducted work functions related to the object of the change order and the work of the contract to be affected.

5) Notice of approved construction contract change orders in excess of \$30,000 will be published in the Transportation Bulletin.

d) Estimated needs shall not be divided in any manner to avoid the use of an established method of procurement. (See Section 20-20(a) of the



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Code.)

## Section 660.110 Sole Source Contracts

- a) A contract may be procured from a single source contractor without competition or use of any other method of procurement prescribed in the Code or this Part when the single source contractor is the only economically feasible source capable of providing the services, including professional and artistic services, contemplated or the material or product to be supplied. (See Section 20-25 of the Code.)
- b) A requirement for a particular proprietary item does not justify a sole source procurement if there is more than one potential bidder or offeror authorized to provide that item. Examples of circumstances that could necessitate sole source procurement include but are not limited to:
  - 1) when the compatibility of equipment, accessories, replacement parts, or service is a primary consideration;
  - 2) when trial use, testing or the development of new technology is the object of the procurement;
  - 3) when a sole supplier's item is to be procured for commercial resale;
  - 4) when utility services are to be procured;
  - 5) when the surety providing a performance bond tenders a completion contractor, acceptable to the Department, to complete a defaulted contract;
  - 6) when the item is copyrighted or patented and the item is not available except from the holder of the copyright or patent or service area licensee; and
  - 7) when utility, railroad or other private property is to be relocated or otherwise adjusted by the owner to accommodate a Department project.
- c) Change Orders to existing contracts germane to the original contract that are necessary or desirable to complete the project, and that can be best accomplished by the contract holder, may be procured under this Section.
- d) The Department shall publish notice of intent to contract on a sole source basis in the Transportation Bulletin at least 14 days prior to execution of the contract. (See Section 20-25 of the Code.)

## Section 660.120 Emergency Contracts

- a) A contract may be procured without the use of any other method of procurement prescribed in the Code or this Part when there exists a threat to public health or safety, or when an immediate contract is needed to repair State property in order to prevent or minimize further loss or damage to State property, or to prevent or minimize serious disruption in State services, including but not limited to completion of a defaulted contract, or to ensure the integrity of

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State records. (See Section 20-30(a) of the Code.)

- b) For purposes of this Section, State property includes all property both real and personal. State records includes all records regardless of the form of storage. State services include, but are not limited to, all activities committed by law to the jurisdiction or responsibility of the Department, whether provided directly or indirectly by means of contract or intergovernmental agreement. Change Orders to existing contracts that are necessary to complete the contract, and that can best be accomplished by the contract holder, may be procured under this Section.
- c) The Department will employ such competition as is practicable under the emergency circumstances to abate the emergency situation, including the use of existing contracts.
- d) Section 20-30(a) of the Code requires a written description of the basis for the emergency and reasons for the selection of the particular contractor to be included in the contract file. Section 20-30 of the Code further requires an affidavit to be filed with the Auditor General setting forth the amount expended, the name of the contractor and the basis for the emergency. For purposes of Department emergency procurements, the Code required affidavits will serve as the Code required written descriptions retained in the contract file, and for purposes of publication notice as required by the Code.

## SUBPART D: COMPETITIVE SEALED BID PROCEDURES

## Section 660.130 General Conditions for Use

The procedures set forth in this Subpart D will be used for all contracts procured by the Department through the use of competitive sealed bids.

## Section 660.140 Invitations for Bids

- a) The process for procuring a contract by competitive sealed bids begins with the issuance of an Invitation for Bids by publication in the Transportation Bulletin not less than 14 days prior to the date set for the opening of bids. (See Section 20-10(c) of the Code.)
- b) The Invitation for Bids may include more than one contract item and will include the following minimum requirements.
  - 1) Instructions and information to bidders concerning the bid submission requirements, including the time and date set for receipt of bids, the address of the office to which bids are to be delivered, the maximum time for bid acceptance, and any other special information. The Invitation for Bids may incorporate documents by reference provided that the Invitation for Bids specifies where such documents can be obtained.
  - 2) A purchase description for each contract item, evaluation factors, delivery or performance schedule, and such inspection

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and acceptance requirements as are not included in the purchase description.

- 3) The contract terms and conditions, including warranty and bonding or other security requirements, as applicable.
- 4) The Invitation for Bids may provide a form that will specify or organize the manner of price submission and that the bidder shall sign and submit along with all other necessary submissions.

c) For procurements of construction, the Invitation for Bids also will include information and instructions for obtaining all contract specifications, special provisions, plans for the construction contract work and bid forms for individual contract items. Bidders for construction contracts are required to have Authorization to Bid issued in accordance with the Department's rules for Prequalification of Contractors and Issuance of Plans and Proposals found at 44 Ill. Adm. Code 650.

d) In addition, each construction contract item will include but not be limited to the following minimum information and requirements enforceable in accordance with State or federal law through the terms and conditions of the contract.

- 1) Information concerning the location, limits and description of the construction work and the scope thereof contemplated by the contract.
- 2) An estimate of the various quantities of the type of work to be performed and the materials to be furnished in the performance of the contract.
- 3) The manner of bid price submission for a construction contract may include lump sum, a schedule of unit prices or a combination thereof based upon the estimate of quantities provided in the contract.
- 4) The manner of making changes in the quantities and such alterations in the work as necessary to satisfactorily complete the contract.
- 5) Provisions to assure that all work is performed in accordance with the contract requirements including but not limited to the following methods.
  - A) Limitations on subcontracting;
  - B) Qualifications and requirements for contractor supervisory personnel;
  - C) Engineering services to be provided by the contractor;
  - D) Department provided resident personnel and inspectors;
  - E) Performance and payment bond requirements;
  - F) Inspection and acceptance of the work requirements;
  - G) Restrictions, sources and quality requirements for all materials and testing or inspection procedures;
  - H) The method of determination and documentation of pay quantities and a record of the materials, supplies and labor furnished in performance of the contract;

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I) The manner of determining satisfactory prosecution of the work and progress to completion of the work in accordance with the time for completion set out in the contract including, when incorporated into the contract, provisions for liquidated damages and incentive payments for early completion; and

J) Provisions for the suspension of work and the termination of the contract.

6) All labor, employment and wage requirements applicable to the contract, and the manner of payroll recording, submission and inspection. (See the Prevailing Wage Act, 820 ICS 130.)

7) All procurement preferences made applicable to the contract. (See Article 45 of the Code.)

8) The manner of measuring the work for payment based upon the estimated quantities provided or upon the actual quantities of material and work measured and completed including but not limited to progress payments as the work proceeds, and final payment.

**Section 660.150 Amendments to Invitations for Bids**

Invitations for Bids may be supplemented, by publication in the Transportation Bulletin, with additional contract items, amended instructions, information, or extensions of any times stated in the invitation. Contract items may be subject to amendment. Amendment to contract items may require that the bidder acknowledge receipt of all amendments issued. Each amendment will reference the contract item it amends. Amendments will be sent to all prospective bidders known to the Department at the time of the amendment.

**Section 660.160 Preparation of Bids**

a) Bidders shall follow all instructions included in the Invitation for Bids and bid forms for submission of bids on the contract item for which bids are sought.

b) Bidders shall submit their bids in the manner required by the Invitation for Bids.

c) Unless otherwise provided, all prices shall be given in figures. Separate prices shall be entered for all pricing items indicated in the bid form. When alternate bids are sought for a particular contract item, the alternates will be identified in the bid form. A bid on every alternate is not required unless otherwise specifically provided. When required by the Invitation for Bids, the bidder shall indicate a unit price for each of the separate price items called for in the bid form. The bidder may be required to show the products of the respective quantities and unit prices in a space provided for that purpose, and a gross sum shown in the place indicated in the bid form as the summation of those products. All writing shall be in a permanent, nonerasable form, except the signature of the bidder,

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- d) which shall be written in permanent, nonerasable ink.
- d) When required by the Invitation for Bids, each bid shall be accompanied by a bid bond in the form provided by the Department with the bid form package. The bid bond shall be made and tendered by a surety acceptable to the Department in the amount stated in the Invitation for Bids. The Department will accept a bank cashier's check or a certified check in lieu of a surety bid bond.

**Section 660.170 Delivery of Bids**

Bids shall be sealed and submitted in the manner specified or allowed by the Invitation for Bids. When sent by mail, the sealed bid shall be addressed to the Department at the address and in care of the official in whose office the bids are to be received. All bids shall be delivered and received by the Department prior to the time and at the place specified in the Invitation for Bids. The date and time of receipt will be recorded. Bids will remain sealed and will be stored in a secure place until the date and time established for bid opening. Bids received after the time specified will be returned to the bidder unopened.

**Section 660.180 Change or Withdrawal of Bids**

A bidder may change or withdraw a bid if written or in-person notice of the change or withdrawal is received by the Department before the time specified for submission of bids. No change or withdrawal is allowed after bid opening except as provided in Section 660.230 of this Part. Changes must be initialed in ink by the bidder. (See Section 20-10(f) of the Code.)

**Section 660.190 Combination Bids for Construction Contracts**

- a) A combination bid is a total bid received on two or more contract items. No combination bids other than those specifically established by the Department will be considered. Separate bid forms will be issued for each contract item in the combination. Bids may be submitted on the combination as well as on the separate contract items of the combination. The Department reserves the right to make awards on combination bids or separate contract item bids.
- b) If a combination bid is submitted on two or more contract items, separate bids on each individual contract shall also be submitted, and unless separate bids are so submitted the combination bid will not be considered. If the bidder intends to submit a combination bid, the bidder shall state, in the place provided in the bid form, the amount of the combination bid for the entire combination.
- c) If a combination bid is submitted on any stipulated combination, and errors are found to exist in computing the gross sum bid on any one or more of the individual bids, corrections will be made by the Department and the amount of the combination bid will be corrected so that it will be in the same proportion to the sum of the corrected

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gross sum bid as the combination bid submitted was to the sum of the gross sum bid submitted.

- d) The following provisions govern combination bidding:

- 1) When a combination bid is submitted and awarded for two or more contract items, the combination bid price will be prorated against each contract item in proportion to the bid price submitted for each individual contract item.
- 2) Separate contracts will be executed for each individual contract item included in the combination.
- 3) The completion time for all contracts awarded on a combination bid will be the latest completion time designated in any of the contracts included in the combination, unless otherwise provided in the contracts.

**Section 660.200 Pre-Bid Conferences**

Pre-bid conferences may be conducted to enhance understanding of the procurement requirements. They will be announced in the Transportation Bulletin. The conference should be held long enough after the Invitation for Bids has been issued to allow bidders to become familiar with it, but sufficiently before bid opening to allow consideration of the conference results in preparing their bids. Only the written minutes of the conference shall be binding. Nothing stated in the pre-bid conference shall change the Invitation for Bids unless a change is made by written amendment to the Invitation for Bids. Minutes of the conference will be available upon request to all those prospective bidders known to have received an Invitation for Bids. If the conference is mandatory, the minutes shall be supplied to attendees only.

**Section 660.210 Public Opening of Bids**

Bids will be opened and read publicly at the time and place specified in the Invitation for Bids. (See Section 20-10(d) of the Code.) The name of each bidder and the price term of each bid will be read aloud and recorded in a tabulation of bids for each contract item advertised. After execution of the contract, the tabulation of bids in the total amount and unit price items, if applicable, of all bidders will be available for public inspection. (See Section 15-25(b) of the Code.)

**Section 660.220 Consideration of Bids**

- a) After the bids are opened, read and recorded, the bids will be reviewed for responsiveness to the Invitation for Bids and conformity with all requirements prescribed in this Part. If unit prices are required, the bids will be compared on the basis of the summation of the products of the quantities shown in the bid schedule by the unit bid prices.
- b) The right is reserved by the Department to reject any or all bids, to



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waive minor informalities or technicalities, to advertise for new bids, or to request confirmation or clarification from any bidder regarding information contained in a bid.

c) Reasons for rejection of all bids include but are not limited to:

- 1) The object of the contract being procured is no longer required.
- 2) The contract provisions require amendment.
- 3) The solicitation did not provide for consideration of all factors of significance to the Department.
- 4) The bid prices exceed available funds or the bid prices exceed the anticipated estimate of costs to the extent that, in the judgment of the Department, prices are unreasonable.
- 5) Evidence of collusion among bidders.
- 6) Actions or events beyond the control of the Department, such as strikes, acts of God, material shortages, acts of the public enemy or litigation, would have an adverse effect on the completion of the anticipated contract.

d) Reasons for rejection of any individual bids include but are not limited to:

- 1) More than one bid for the same contract item from a bidder under the same or different names.
- 2) Evidence of collusion among bidders.
- 3) Unbalanced bids in which the bid prices for some items are, in the judgment of the Department, out of proportion to the bid prices for other items.
- 4) If the bid does not contain a unit price for each pay item listed, except in the case of authorized alternate pay items or lump sum pay items.
- 5) If the bid form is other than that furnished or authorized by the Department, or if the form is altered or any part thereof is detached.
- 6) If there are omissions, erasures, alterations, unauthorized additions, conditional or alternate bids, or irregularities of any kind that may tend, in the judgment of the Department, to make the bid incomplete, indefinite, or ambiguous as to its meaning.
- 7) If the bidder adds any provisions reserving the right to accept or reject an award, or to enter into a contract pursuant to an award.
- 8) If the bid is not accompanied by the proper bid bond or substitute guaranty.
- 9) If the bid is prepared in any manner other than as indicated in this Part or the Invitation for Bids making the bid not responsive.

### Section 660.230 Mistakes

- a) If a bidder claims a mistake in its bid, the bid may be withdrawn in accordance with this Section without payment of damages to the

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Department as provided in the terms of a bid bond or other bid security, provided the bidder claiming the mistake demonstrates to the Department with competent and reliable evidence:

- 1) that the claimed mistake is related to a material feature of the contract;
  - 2) that the mistake would have serious, material consequences to the bidder such that enforcement of a contract would be unconscionable;
  - 3) that the mistake occurred notwithstanding the exercise of reasonable care by the bidder; and
  - 4) that the bidder has raised the claim of a mistake without delay in order to prevent the Department from altering its position in such a manner that loss to the State would occur.
- b) The Department reserves the right to correct obvious, apparent errors in bids. A bid may not be withdrawn if a mistake is apparent and the intended correct bid is clearly evident on the face of the bid. Examples of mistakes that may be clearly evident on the face of the bid include but are not limited to typographical errors, errors in extending unit prices, transposition errors and arithmetical errors.
- c) Mistakes claimed after execution of the contract will not be corrected.

### Section 660.240 Award After Bid Evaluation

- a) Unless all bids are rejected, an award notification will be made to the lowest responsible bidder whose bid is responsive to and conforms with the requirements and criteria of the invitation. Tie bids will be decided by lot. All responsibility, responsiveness, and price factors are considered so as to select the bid most advantageous to the State. An individual contract item advertised in an Invitation for Bids may state other, additional award and evaluation criteria that will be capable of objective consideration for award. (See Section 20-10(g) of the Code.)

- b) Responsibility of bidders for construction contracts is determined in accordance with the Department's rules for Prequalification of Contractors and Issuance of Plans and Proposals found at 44 Ill. Adm. Code 650.

- c) For nonconstruction contracts, the responsibility of bidders will be determined based upon the following factors unless some other or additional factors or prequalification procedures are stated in the Invitation for Bids.

- 1) The bidder shall possess the appropriate financial, material, equipment, facility and personnel resources and expertise necessary to meet all contractual obligations.
- 2) The bidder shall have a satisfactory record of performance, including but not limited to a sound record of integrity and business ethics.
- 3) The bidder shall be under no legal disability of any kind to

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contract with the State.

- 4) The bidder shall have submitted all information requested by the Invitation for Bids concerning responsibility.

**Section 660.250 Split and Multiple Awards**

- a) The Department may advertise a contract for a potential split award of a definite quantity requirement between two or more bidders. The Invitation for Bids will advise of the reservation of split awards and the basis for dividing the award.
- b) The Department may advertise a contract for multiple award of an indefinite quantity when two or more contractors are necessary for adequately meeting the Department's needs. The Invitation for Bids will advise of the reservation of multiple awards.

**Section 660.260 Time for Award**

Unless the Invitation for Bids specifies a different time for bid acceptance, a notification of award will be made in writing dated within 45 calendar days after the opening of bids.

**Section 660.270 Delay in Award**

Should circumstances be encountered after bid opening that may delay award beyond the 45 day or other advertised period, the responsive bidders may be requested to extend the bid acceptance period.

**Section 660.280 Binding Contract**

- a) Once an award has been made, the bidder is bound to perform according to the terms and conditions of the contract, the Invitation for Bids and this Part.
- b) An approved contract executed by the Department is required before the State is bound. An award may be canceled any time by the Department prior to execution in order to protect the public interest and integrity of the bidding process or for any other reason if, in the judgment of the Department, the best interests of the State will be promoted.

**Section 660.290 Requirement of Contract Bond for Construction Contracts**

The successful bidder awarded a construction contract shall furnish the Department a performance and payment bond with good and sufficient sureties in the full amount of the contract as the penal sum. (See the Public Construction Bond Act [30 ILCS 550].) The surety shall be acceptable to the Department, shall waive notice of any changes and extensions of time, and shall submit its bond on the form furnished by the Department. Performance security for other contracts shall be as stated in the Invitation and contract.

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**Section 660.300 Execution of Contract**

- a) The bid form submitted by the bidders may be in such a form that the signature of the bidder on the form is also the signature of the bidder for purposes of contract execution. In such circumstances, the Department will, after acceptance and approval of the bid for contracting purposes, execute the contract and return a copy to the bidder.
- b) If the contract as bid requires additional execution by the bidder, the contract shall be executed by the successful bidder and returned, together with any required contract bond, within 15 days after the contract has been mailed to the bidder. Failure of the successful bidder to execute the contract and file acceptable bonds within 15 days after the contract has been mailed to the bidder is cause for the cancellation of the award and the forfeiture of the proposal guaranty. If the contract is not executed by the Department within 15 days following receipt from the bidder of the properly executed contract and bond, the bidder shall have the right to withdraw the bid without penalty.

**Section 660.310 Publication of Contracts**

Notice of contracts entered into by the Department pursuant to this Subpart D will be published in the Transportation Bulletin.

**SUBPART E: COMPETITIVE SEALED PROPOSAL PROCEDURES****Section 660.320 General Conditions for Use**

The procedures set forth in this Subpart E will be used for all contracts procured by the Department by competitive sealed proposals supported by a written determination that competitive sealed bidding is not practicable or not advantageous. (See Section 20-15(a) of the Code.)

**Section 660.330 Request for Proposals**

- a) The process for procuring a contract by competitive sealed proposals begins with the issuance of a Request for Proposals by publication in the Transportation Bulletin not less than 14 days before the date set in the request for the opening of proposals. (See Section 20-15(b) and (c) of the Code.)
- b) The Request for Proposals will include the following elements that may be adapted to accomplish the objectives of the Department.
  - 1) A general description of the type of service needed.
  - 2) A general description of the nature of the work and its relationship to the objectives of the Department.
  - 3) The anticipated starting date and duration of the contract.
  - 4) A general description of the final product to be produced or

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service to be rendered.

- 5) A detailed description of the work of the project that also discloses a summary of any preliminary work that has been done, and any special conditions affecting the performance of the work, including but not limited to location, licenses, skills required and materials to be supplied. In addition, a timetable for performing the work, including reporting requirements, may be included or instructions for the offerors to provide an acceptable timetable may be specified.
- 6) A description of the required format for a proposal, including some or all of, but not limited to, the following elements:
  - A) Technical Proposal: A document describing in detail how the work will be accomplished, including any services that would be provided through a subcontract.
  - B) Staffing: A summary of the qualifications of the individuals who would be assigned to the project, a general account of experience in the field of work, and a list of current and anticipated contracts that could require the involvement of the project staff during the term of the Department's contract.
  - C) Cost Estimate: When the project is federally-funded, a detailed estimate of direct and indirect costs of accomplishing the work. When the project is not federally-funded, the Request for Proposal will indicate when and how price will be submitted.
  - D) Samples of Previous Work: Copies of reports, manuals, plans, etc., that are closely related to the type of services needed.
  - E) A statement of any additional requirements.
- 7) A description of the evaluation factors that will be used to evaluate and rank the proposals, and the relative importance of price to the evaluation factors. (See Section 20-15(e) of the Code.)
- 8) A name and phone number of the responsible Department office, and the official mailing address, date and time for submission of the proposal and supporting documents.
- 9) For any federally-funded contract that is expected to exceed \$50,000 in cost, a notification that fiscal information may be required prior to an award detailing the offeror's accounting system, payroll burden, fringe expenses, and general and administration overhead expense percentage rating for purposes of a pre-contract audit.
- 10) A statement, for nonfederally-funded contracts, of when and how price will be submitted.
- 11) A statement that discussions may be conducted with offerors that submit proposals determined to be reasonably susceptible of being selected for award, but that proposals may be accepted and evaluated, and that an award may be made and contract executed

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without discussions.

## Section 660.340 Delivery of Proposals

- a) Proposals shall be sealed and submitted in the manner specified or allowed by the Request for Proposals. When sent by mail, the sealed proposal shall be addressed to the official mailing address specified in the request. All proposals shall be delivered and received by the Department prior to the time and at the official address specified in the Request for Proposals. Proposals received after the time specified will be returned to the offeror unopened. The date and time of receipt will be recorded. Proposals will be held in a secure place until the established due date. After the date and time established for receipt of proposals, a register of proposals will be prepared that will include for all proposals the name of each offeror and a description sufficient to identify the supply or service item offered. The register of proposals is open to public inspection after award of the contract. Proposals will be maintained in a confidential manner during the period prior to execution of a contract. (See Section 20-15(f) of the Code.)
- b) Proposals will be opened publicly in the presence of at least one witness at the time and place indicated, but contents of individual proposals will not be disclosed.

## Section 660.350 Evaluation of Proposals

- a) The evaluation is based on the evaluation factors set forth in the Request for Proposals. Numerical rating systems may be used but are not required. Factors not specified in the Request for Proposals will not be considered. For purposes of conducting discussions with responsible offerors and for revision of proposals, proposals may be initially classified as:
  - 1) acceptable;
  - 2) potentially acceptable, that is, reasonably susceptible of being made acceptable; or
  - 3) unacceptable.
- b) Offerors whose proposals are unacceptable will be so notified.
- c) Except for federally-funded contracts, proposals will be evaluated on all particulars independent of price.
  - 1) For federally-funded contracts, a pre-discussion audit may be performed to provide the necessary data to assure that the offeror has an acceptable accounting system, adequate and proper justification of the various rates charged to perform the work and is aware of federal cost eligibility and documentation requirements. Pre-discussion audits and the resultant audit opinions are required for all contracts expected to exceed \$250,000 and for all contracts of less than \$250,000 where:
    - 1) there is insufficient knowledge of the offeror's accounting



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system:

- 2) there is previous unfavorable experience regarding the reliability of the offeror's accounting system; or
  - 3) the contract involves the procurement of new equipment or supplies for which cost experience is lacking.
- pre-discussion audits may be waived when sufficient audited data is available to permit reasonable comparisons with the cost proposal.

**Section 660.360 Discussions with Responsible Offerors**

- a) "Offerors" Defined. For purposes of this Section, the term "offerors" includes only those businesses submitting proposals that are acceptable or potentially acceptable. The term does not include businesses who submitted unacceptable proposals.
- b) Purposes of Discussions. Discussions may be held to promote understanding of the Department's requirements and the offerors' proposals, and to facilitate arriving at a contract that will be most advantageous to the State, taking into consideration price and the other evaluation factors set forth in the Request for Proposals. (See Section 20-15(f) of the Code.)
- c) Conduct of Discussions. Offerors will be accorded fair and equal treatment with respect to any opportunity for discussions and revisions of proposals. If during discussions there is a need for any substantial clarification of or change in the Request for Proposals, the Request shall be amended to incorporate such clarification or change and all offerors advised accordingly. Revealing one offeror's price to another and disclosure of any information derived from competing proposals are prohibited. Any substantial oral clarification of a proposal shall be reduced to writing by the offeror. (See Section 20-15(f) of the Code.)
- d) Best and Final Offers. The Department may establish a common date and time for the submission of best and final offers. The Department may conduct additional discussions or change the State's requirements and require another submission of best and final offers. If an offeror does not submit either a notice of withdrawal or another best and final offer, that offeror's immediately previous offer will be construed as its best and final offer.

**Section 660.370 Award**

- a) An award will be made pursuant to a written determination, retained in the contract file, showing the basis on which the award was found to be most advantageous to the State, based on the factors set forth in the Request for Proposals, and taking into consideration price. (See Section 20-15(g) of the Code.)
- b) Nothing shall compel the award of a contract. Contract execution will be as specified in the Request for Proposals. A solicitation may be canceled at any time when such action is determined in the sole

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judgment of the Department to be in the best interest of the State.

**Section 660.380 Publication of Contracts**

Notice of contracts entered into by the Department pursuant to this Subpart F will be published in the Transportation Bulletin.

**SUBPART F: PROTESTS****Section 660.390 Application**

The procedures of this Subpart F will govern the resolution of protests received by the Department from an interested party concerning a contract solicitation.

**Section 660.400 Interested Party**

In order to be considered an interested party, the protester must be or have been an actual bidder or offeror who demonstrates compliance in all respects with this Part and the terms of the subject Invitation for Bids or Request for Proposals.

**Section 660.410 Subject of the Protest**

- a) A protest may be filed regarding any phase of the solicitation process for a particular contract.
- b) The subject of the protest shall concern fraud, corruption or illegal acts undermining the objectives and integrity of the procurement process.
- c) Protest procedures of this Subpart F do not apply to issues of prequalification, suspension or debarment.

**Section 660.420 Filing of a Protest**

- a) All protests shall be in writing and filed with the Chief Procurement Officer within 7 calendar days after the protester knows or should have known of the facts giving rise to the protest. Protests filed after the 7 calendar day period will not be considered. In addition, protests that raise issues of fraud, corruption or illegal acts affecting specifications, special provisions, supplemental specifications and plans must be received by the Chief Procurement Officer no later than 14 calendar days before the date set for opening of bids.
- b) The protest shall be contained in an envelope clearly labeled "Protest." The written protest shall include as a minimum the following requirements.
  - 1) The name, address, telephone and facsimile numbers of the protester.

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- 2) The identification of the procurement or solicitation that is the subject of the protest.
- 3) All information establishing that the protester is an interested party.
- 4) A detailed statement of the factual and legal grounds of the protest, including all relevant documents and exhibits that demonstrate fraud, corruption or illegal acts having the effect of undermining the integrity of the procurement process.
- 5) All information establishing the timeliness of the protest.
- 6) The signature of the protester.

**Section 660.430 Stay of Action during Protest**

When a protest has been timely filed and before an award has been made, the Department will make no award of the contract until the protest has been resolved, unless the award of the contract without delay is necessary to protect the interests of the State. When a protest has been filed after an award has been made, the protest will be denied.

**Section 660.440 Decision**

- a) A decision on a protest will be made as expeditiously as possible after receiving all relevant information.
- b) The protest will be sustained only if it is determined by the Chief Procurement Officer that the protest conclusively demonstrates by the preponderance of relevant information submitted that fraud, corruption or illegal acts have occurred that undermine the integrity of the procurement process.
- c) If the protest is sustained, the remedies available are limited to cancellation or revision of the solicitation, or readvertisement of the solicitation. Relief available does not include award of the contract to the protester.
- d) The decision of the Chief Procurement Officer is final and conclusive unless clearly erroneous, arbitrary, capricious or contrary to law. (See Section 20-75 of the Code.) A copy of the decision of the Chief Procurement Officer will be transmitted to the protester within 14 days after the decision is entered.

## SUBPART G: SPECIFICATIONS

**Section 660.450 Standard Specifications**

All Department construction contracts will identify the version of the Standard Specifications, applicable to the type of work involved, used by the Department Division undertaking the project.

**Section 660.460 Contract Documents**

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For construction contracts, the specifications, supplemental specifications, special provisions and plans will provide the requirements for the categories of work and materials needed for the contract. For all other contracts involving the procurement of supplies, the specifications will be incorporated in the appropriate contract documents.

**Section 660.470 Specification Standards**

- a) Material and product specifications for construction contracts and construction-related service contracts that may require the delivery of material or products will be used that satisfy the needs of the Department and that are developed in accordance with the following standards.

- 1) Material and product specifications will reflect the needs of the Department and will describe the technical or performance requirements necessary to complete the contemplated work.
- 2) Brand-name only product specifications, including patented or proprietary products, will not be used, unless:
  - A) such products may be procured competitively with equally suitable nonbrand-name products; or
  - B) such products are necessary for compatibility with existing facilities; or
  - C) no equally suitable alternate exists; or
  - D) such products are to be used for research or for a distinctive type of application for experimental purposes.
- 3) When more than one product will fulfill the requirements for an item of work and the products are judged by the Department to be of satisfactory quality, and equally acceptable on the basis of engineering analysis and estimated price, the contract specifications may contain or include by reference a qualified products list.
- b) For nonconstruction and nonconstruction-related services contracts, the Department adopts the standards for specifications established by the Department of Central Management Services.

## SUBPART H: SUSPENSION OF CONTRACTORS

**Section 660.480 Purpose**

The purpose of this Subpart H is to establish the standards and procedures governing the administrative action of suspension that may be taken by the Department to safeguard the public interest in the solicitation, execution, administration and performance of public contracts. This Subpart applies to all suspension administrative actions taken by the Department regarding any contractor that has participated, is currently participating or may be expected to participate in any Department contract.

**Section 660.490 Definitions**

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As used in this Subpart:

- a) "Affiliates" means firms where one controls or has the power to control another, or a third party or parties controls or has the power to control both.
- b) "Contract" means, in addition to the meaning set forth at Section 660.40, a written agreement between a contractor and the Department, or an agreement subject to Department approval, regardless of form or method of procurement.
- c) "Contractor" means any person, firm, corporation, organization, partnership, or association, however organized, and its affiliates, including its owners, directors, officers, partners, managers, key employees and others engaged in primary managerial or supervisory positions.
- d) "Hearing Officer" means the Secretary or an attorney, licensed to practice law in this State, appointed by the Secretary.
- e) "Participation" means to enter into or attempt to enter into a contract awarded or approved by the Department, irrespective of the method of procurement, or any subcontract, material supply agreement or equipment lease transaction in connection with any such contract.
- f) "Indictment" means the charge, information, or other filing by a competent authority charging a criminal offense.
- g) "Secretary" means the Secretary of Transportation.

## Section 660.500 Policy

In order to protect the public interest in the solicitation, execution and performance of contracts administered by the Department, it is the policy of the Department to conduct business only with contractors of responsible business integrity and honesty. Suspension is a discretionary action imposed in accordance with this Part to serve the public interest and to implement this policy. It may be imposed only for the causes and in accordance with the procedures set forth in this Subpart.

## Section 660.510 General

The Secretary may suspend a contractor from participation on any contract awarded by or requiring approval or concurrence of the Department upon a determination by the Secretary based upon adequate evidence that the contractor has engaged in conduct proscribed by Section 660.520 of this Subpart. This determination may be predicated on evidence developed by means of an investigation conducted by the Department and the record of any hearing requested and conducted pursuant to this Subpart; by review of the public record containing a criminal conviction, a civil judgment, or an admission under oath of conduct evidencing proscribed conduct including a plea of nolo contendere; or the findings and decisions made in accordance with law by another public agency that the contractor has engaged in conduct proscribed by Section 660.520 of this Subpart.

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## Section 660.520 Causes for Suspension

A contractor may be suspended from participation due to acts or omissions that indicate that the contractor lacks integrity and honesty in the conduct of business or the performance of contracts. Acts or omissions that indicate the lack of business integrity and honesty include but are not limited to:

- a) fraud, bribery, embezzlement, theft, collusion, conspiracy, anti-competitive activity or other misconduct and offenses prohibited by law whether or not any such misconduct or offense is in connection with a Department contract or any contract requiring Department approval;
- b) making a material false statement in an application for prequalification or any forms or affidavits required as part of a prequalification process;
- c) materially violating any rule or procurement procedure or making a material false statement in connection with any rules or procurement procedures of the Department;
- d) making a material false statement, representation, claim or report respecting the character, quality, quantity, or cost of any work performed or materials furnished in connection with a contract administered or supervised by the Department;
- e) doing business with a suspended contractor in connection with a contract of the Department or subject to approval of the Department during the period of suspension; or
- f) being debarred or suspended by another agency of this State or the United States.

## Section 660.530 Interim Suspension

The Secretary may immediately suspend a contractor prior to and during the pendency of a hearing provided by this Subpart if the Secretary finds that the facts and circumstances upon which the suspension cause is predicated are of such a nature as to require immediate action to safeguard the public interest in the solicitation, execution, administration or performance of contracts, whether awarded by the Department or subject to Department approval. An interim suspension may be imposed pending the completion of an investigation of the causes for suspension. Indictment upon charges evidencing a cause for suspension is a basis for an interim suspension. An interim suspension is effective immediately and will continue for a period of time established by the Secretary of up to 120 days unless terminated sooner by the Secretary. The Secretary may extend the duration of an interim suspension beyond 120 days in order to allow for completion of a hearing that was scheduled for commencement during the original 120 day interim suspension period. In cases involving interim suspension based upon indictment, the interim suspension may be imposed for a period of up to one year or until conclusion of the legal proceeding.

## Section 660.540 Voluntary Exclusion



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A contractor may accept a status of nonparticipation or limited participation in Department contracts pursuant to the terms of an administrative settlement.

**Section 660.550 Term of Suspension**

Except as herein provided, the term of a suspension imposed by the Secretary will be for a period, commensurate with the seriousness of the cause or causes, of up to five years. In cases involving the inadvertent or accidental failure to make the full disclosures required by Section 50-35 of the Code, the term of suspension will be for a period of no more than two years. (See Section 50-35(f) of the Code.) In cases involving the intentional, willful, or material failure to make the full disclosures required by Section 50-35 of the Code, the term of suspension will be for a period of not more than ten years with eligibility for reinstatement after two years. (See Section 50-35(g) of the Code.)

**Section 660.560 Coverage**

- a) A suspension and interim suspension applies to the contractor set forth in the notice of suspension.
- b) If the contractor named in the notice of suspension is a person, the suspension also applies to any other contractor:
  - 1) in which the suspended person is an officer, director, manager or in any other substantial management or supervisory position, until such time as the person is severed from such contractor; or
  - 2) in which the suspended person has controlling legal or beneficial financial interest, until such time as the suspended person's interests are divested.
- c) In addition to all covered entities and affiliates, the suspension also applies to any entity or affiliate that is formed or organized subsequent to the date a suspension action was entered.
- d) Any suspended contractor, for the term of such suspension, is ineligible to participate as a contractor, subcontractor, material supplier or lessor of equipment on or in connection with contracts awarded or approved by the Department.

**Section 660.570 Other Agency Suspensions**

Suspension under this Subpart H may be concurrent with or consecutive to any other suspension or debarment imposed by another public agency.

**Section 660.580 Responsibility**

Suspension under this Subpart H will also be deemed a finding of lack of responsibility.

**Section 660.590 Continuation of Executory Contracts**

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Suspension or voluntary exclusion pursuant to this Subpart H shall not relieve a contractor or its surety of any obligation to be performed in accordance with the terms of any executory contract or bond that remains in full force and effect. Executory contracts are voidable by the Department without penalty or further payment, except payment for completed and accepted work, if the facts and circumstances giving rise to the suspension are of such a nature as to require action to safeguard the public interest.

**Section 660.600 Exception Provision**

A suspension action is final, except that the period of time during which a contractor is suspended may be decreased, delayed or rescinded at any time, if, in the judgment of the Secretary, the public interest warrants such action. The Secretary may grant an exception permitting a suspended or voluntarily excluded contractor to participate in a particular contract or type of contracts if the public interest will be served by the participation. A contractor suspended for the intentional, willful, or material failure to make the disclosures required by Section 50-35 of the Code is not eligible for exception or reinstatement until two years of the suspension shall have passed. (See Section 50-35(g) of the Code.)

**Section 660.610 Notice of Suspension**

- a) Any contractor that the Department proposes to suspend pursuant to this part will be furnished written notice by personal service or by certified or registered mail.
- b) The notice will include the following:
  - 1) The cause for suspension on which the proposed suspension is based.
  - 2) A clear and concise statement of the matters asserted and acts complained of, and the statutes, cause or rules upon which the allegations in the notice are based.
  - 3) The legal authority and jurisdiction under which the action is taken, and the consequences of a failure to respond.
- c) A notice may be amended at any time.
- d) If the Secretary has imposed an interim suspension, the notice will so indicate, will provide the reasons for the interim suspension, will state the interim period, and will state whether the interim suspension is pending completion of an investigation, an ensuing legal proceeding or a hearing provided according to this Subpart H.
- e) Except in cases of interim suspensions imposed by reason of indictment, the notice will set forth the right to request a hearing.

**Section 660.620 Response and Request for Hearing**

- a) Any contractor receiving a notice of suspension may, within 30 days after receipt of a notice, file an appearance and request for a hearing. A contractor that does not file an appearance and request a

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hearing within the 30 days after receipt shall be deemed to have waived any hearing and will be subject to immediate suspension.

- b) Within 30 days after receipt of a notice that imposes an interim suspension, the contractor may submit, in person, in writing, or through a representative, information, documentation and argument in opposition to the interim suspension. The Secretary will consider the contractor's submission in light of the evidence developed in the pending investigation, and may modify or terminate the suspension or may leave it in force. The Secretary's decision concerning imposition of an interim suspension is final without further hearing.

**Section 660.630 Hearing Date and Hearing Officer**

- a) Upon receipt of an appearance and request for hearing, the Secretary will set the matter for a hearing within 30 days, and notify the contractor of the place, time and date of the hearing and the designated Hearing Officer.
- b) The contractor may file a written motion for disqualification of a Hearing Officer, setting forth reasons of personal bias or conflict of interest, within three days after appointment of the Hearing Officer.

**Section 660.640 Answer**

The contractor may file a written answer to a notice not later than twenty days prior to the hearing date, but shall not be required to file an answer. The answer may include affirmative defenses.

**Section 660.650 Form of Documents**

- a) Documents shall clearly show the file hearing number and the title of the proceedings in connection with which they are filed.
- b) Except as otherwise provided, two copies of all documents shall be filed.
- c) Documents shall be typewritten or reproduced from typewritten copy on letter size white paper.
- d) Each document filed shall be signed by the party or by his authorized representative or attorney.

**Section 660.660 Computation of Time**

- a) Computation of any period of time prescribed by this Subpart H begins with the first business day following the day on which the act, event or development initiating such period of time occurs, and runs until the end of the last day, or the next following business day if the last day is a Saturday, Sunday, or legal holiday. When the period of time is five days or less, Saturdays, Sundays and legal holidays are excluded in the computation of time.
- b) Notice requirements shall be construed to mean notice received, but

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proof that notice was dispatched by means reasonably calculated to be received by the prescribed date shall be prima facie proof that notice was timely received.

**Section 660.670 Appearances**

- a) Any person participating in proceedings may appear as follows:
  - 1) A person may appear in his/her own behalf or by an attorney at law licensed to practice in the State of Illinois, or both.
  - 2) A business, nonprofit, or government organization may appear by any bona fide officer, employee, or representative, or may be represented by an attorney licensed to practice in the State of Illinois, or both.
- b) Attorneys not licensed to practice in the State of Illinois may appear on motion.
- c) An attorney appearing in a representative capacity shall file a written notice of appearance.

**Section 660.680 Hearing Procedures**

- a) The Hearing Officer has the authority to conduct and preside over the hearing, to take all necessary action to avoid delay, to maintain order, to ensure compliance with all notice requirements and to ensure the development of a clear and complete record. The Hearing Officer shall have all powers necessary to conduct a fair and impartial hearing including, but not limited to, the power to:
  - 1) Administer oaths and affirmations;
  - 2) Regulate the course of hearings, set the time and place for continued hearings, fix times for filing of documents, and in general conduct the proceedings, according to recognized principles of administrative law and the provisions of this Part;
  - 3) Examine witnesses and direct witnesses to testify, limit the number of times any witness may testify, limit repetitious or cumulative testimony, and set reasonable limits on the amount of time each witness may testify;
  - 4) Rule upon all motions and offers of proof and receive relevant, material evidence admissible under the rules of evidence applied in civil cases in the circuit courts of the State, including evidence not admissible under those rules, but that is of a type commonly relied upon by reasonably prudent people in the conduct of their affairs;
  - 5) Direct parties to appear and confer for the simplification of issues, or presentation of evidence that may be received in written form without prejudice to the parties, and otherwise conduct pre-hearing conferences;
  - 6) Dispose of procedural requests or similar matters;
  - 7) Issue orders relating to pre-hearing discovery to the extent authorized by and permitted under this Part; and

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- 8) Enter any order that further carries out the purpose of this Part.
- b) The Hearing Officer has the authority to extend the date of any hearing, provided that the Hearing Officer may condition the granting of a contractor's request for an extension on the imposition or extension of an interim suspension should the circumstances warrant such action.
- c) Any party to the hearing shall have the right to direct any other party to produce for inspection, copying, reproduction or photocopying written documents relevant to the subject matter of the hearing. Such request for documents shall be in writing and served on the party from whom production of documents is sought. A copy of the request shall be sent to the Hearing Officer and shall become part of the record of the case. The request shall specify a reasonable time, place and manner of making the inspection and copying.
- d) The parties shall be afforded the opportunity to present, examine and cross-examine witnesses.
- e) In cases where it has been established by admission or conviction or judgment of a court of competent jurisdiction that the contractor has engaged in conduct warranting a suspension or where it has been established by findings made in accordance with law by another public agency that the contractor has engaged in conduct warranting a suspension, the sole issue before the Hearing Officer shall be the receipt of evidence as to the appropriate length of a suspension. In such cases the Hearing Officer shall not receive evidence relating to the merits of the prior judicial or administrative decision or findings.
- f) The Hearing Officer shall make a report containing findings of fact and conclusions of law and shall transmit the entire record, including such findings and conclusions, to the Secretary for review and final decision. If the Secretary will not review the record prior to rendering a decision, the Hearing Officer will serve upon the parties a proposed decision to which the parties may file a brief containing exceptions.
- g) Testimony at the hearing shall be recorded either by a certified court reporter or a mechanical recording device, but need not be transcribed unless requested by a party who shall pay for the transcription of the portion requested. The transcript and the record offered in connection with the hearing shall constitute the official record.
- h) The record shall include:
  - 1) All pleadings, motions, and rulings;
  - 2) Evidence received;
  - 3) A statement of matters officially noticed;
  - 4) Offers of proof, objections and rulings thereon;
  - 5) Any proposed findings and exceptions to the report of the Hearing Officer, and the decision.

## Section 660.690 Determination

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- a) Based on the record as a whole and an adequate evidence standard of proof, the Secretary will determine the suspension action to be taken.
- b) In assessing adequate evidence, consideration will be given to how much credible information is available, its reasonableness in view of surrounding circumstances, corroboration or lack thereof as to important allegations, and inferences that may be drawn from the existence or absence of affirmative facts. This assessment will include an examination of basic documents such as contracts, inspection reports, and correspondence.
- c) Upon reaching a final decision, the Secretary will notify the contractor of the determination and will set forth the period of time during which the contractor shall be suspended from bidding on Department contracts or contracts requiring Department approval or concurrence. Affected local government agencies will be notified of the final decision. Any interim suspension shall be deducted from the period of final suspension.
- d) Parties will be served with a copy of the final decision by mail, postage prepaid, certified or registered, addressed to the last known address of the person, partnership, association, or company involved. A copy of the final decision will be mailed to each party and to all attorneys of record.

## SUBPART I: MISCELLANEOUS

## Section 660.700 Property Rights

Receipt of an Invitation for Bids, Request for Proposals or other procurement document, or submission of any response thereto or other offer confers no right to receive an award or contract, nor does it obligate the State in any manner. All procurement documents submitted by a bidder or offeror become the property of the Department for disposition in accordance with the requirements of law. Trade secrets or other proprietary information submitted to the Department shall be expressly identified in writing; however, the Department reserves the right to determine the validity of any such claim, and may refuse to award a contract or may void any contract in circumstances where the party claiming the trade secret or proprietary data is unable to agree to disclosure for a public purpose. (See Section 1-25 of the Code.)

## Section 660.710 Federal Requirements

Procedures applicable to procurements that contemplate the use of federal-aid funds, grants or loans shall be in accordance with requirements established by the federal administration having responsibility therefor, even if in addition to or in contravention of this Part. (See Section 20-85 of the Code.)

## Section 660.720 Intergovernmental Agreements

Any procurement conducted by the Department on behalf of another government



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entity pursuant to an intergovernmental agreement shall be conducted using the procedures of this Part in accordance with the applicability provisions of the Code. (See Section 1-10(b) of the Code.)

**Section 660.730 No Waiver of Sovereign Immunity**

Nothing in this Part shall be deemed to be a waiver of sovereign immunity.

**Section 660.740 Written Determinations**

The Chief Procurement Officer will prescribe any administrative methods and operational procedures to be used in preparing written determinations required to be made by the Department by the Code or this Part, and will make such delegations to responsible officers for the implementation of the methods and procedures as will achieve the proper preparation, execution and retention of each written determination.

**Section 660.750 Severability**

If any provision or application of this Part is held invalid, such invalidity shall not affect other provisions or applications of this Part that can be given effect without such invalid provision or application.

## DEPARTMENT OF NUCLEAR SAFETY

## NOTICE OF EMERGENCY AMENDMENT

1) Heading of the Part: Particle Accelerators2) Code Citation: 32 Ill. Adm. Code 3903) Section Number:  
390.50 Emergency Action:  
Amendment4) Statutory Authority: Implementing and authorized by the Radiation Protection Act of 1990 [420 ILCS 40].5) Effective Date of Amendments: November 17, 19986) If this emergency amendment is to expire before the end of the 150-day period, please specify the date on which it is to expire: This emergency amendment will expire when the proposed amendment is adopted.7) Date Filed with the Index Department: November 17, 1998

## 8) A copy of all material incorporated by reference is on file at the Department's headquarters located at 1035 Outer Park Drive, Springfield, Illinois and is available for public inspection.

9) Reason for the Emergency: The current regulations do not address a dosimetry technology recently approved through a U.S. Department of Commerce accreditation program. The regulations are being modified to allow the immediate use of this new technology and thereby prevent an unnecessary hardship on licensees.10) A Complete Description of the Subjects and Issues Involved: The Department is proposing to modify its rules pertaining to the use of certain types of personnel dosimetry. The current rules authorize the use of film badges and thermoluminescent dosimeters for personnel dosimetry. The U.S. Department of Commerce, National Institutes of Standards and Technology, through the National Voluntary Laboratory Accreditation Program (NVLAP), have accredited a new technology, optically stimulated luminescent (OSL) dosimetry. The Department's rules should not prohibit the use of this new technology, therefore, the rules are being modified to include any dosimetry approved through NVLAP.

The Department's action should not be understood as a desire to limit or preclude public comment. Elsewhere in this issue of the *Illinois Register*, the Department is proposing, for public comment, a general rulemaking that covers the topics included in the Emergency rule.

11) Are there any other proposed amendments to this Part pending? No12) Statement of Statewide Policy Objectives: The requirements imposed by the emergency rulemaking are not expected to require local governments to

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establish, expand, or modify their activities in such a way as to necessitate additional expenditures from local revenues.

- 13) Information and questions regarding this emergency rule shall be directed to:

Robert B. Holtsclaw  
Staff Attorney  
Department of Nuclear Safety  
1035 Outer Park Drive  
Springfield, Illinois 62704  
(217) 524-1003 (voice)  
(217) 782-6133 (TDD)

The full text of the emergency amendments begin on the next page:

## DEPARTMENT OF NUCLEAR SAFETY

## NOTICE OF EMERGENCY AMENDMENT

TITLE 32: ENERGY

CHAPTER II: DEPARTMENT OF NUCLEAR SAFETY  
SUBCHAPTER b: RADIATION PROTECTION

## PART 390

## PARTICLE ACCELERATORS

Section	Scope
390.10	Definitions
390.20	Operating Procedures and Instructions
390.30	Equipment Controls
390.40	Radiation Monitoring
390.50	EMERGENCY
390.60	Radiation Surveys
390.70	Personnel Training

AUTHORITY: Implementing and authorized by the Radiation Protection Act of 1990 [420 ILCS 40].

SOURCE: Filed and effective April 24, 1970, by the Department of Public Health; transferred to the Department of Nuclear Safety by P.A. 81-1516, effective December 3, 1980; codified at 7 Ill. Reg. 11278; amended at 18 Ill. Reg. 3143, effective February 22, 1994; emergency amendment at 22 Ill. Reg. 21097, effective November 17, 1998, for a maximum of 150 days.

## Section 390.50 Radiation Monitoring

EMERGENCY

- a) Portable radiation monitoring equipment shall be properly maintained and available at the accelerator facility. An appropriate radiation monitor shall be used for all accelerator target rooms and other high radiation areas. This monitor shall be one or more of the following:
  - 1) An area monitor with an easily observable indicator located near the entrance that warns of radiation levels above a predetermined limit;
  - 2) A personal radiation monitor of the "chirpie" type worn while in the room;
  - 3) A portable survey instrument carried into the room; or
  - 4) A monitor approved by the Department.
- b) No registrant shall permit any individual to enter a restricted area unless such individual wears both: a film badge or thermoluminescent dosimeter ~~(TLD)~~ and a pocket ionization chamber ~~---~~ pocket ionization chambers ~~---~~ shall be capable of measuring doses from zero to at least 51.6 mrem/kg (500 mR) ~~---~~ A film badge or thermoluminescent dosimeter ~~(TLD)~~ shall be assigned to and worn by only one individual and shall be capable of registering 3.58 mrem/kg (10R) or greater.
- 1) An individual monitoring device, assigned to and worn by only one

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individual, that is provided and evaluated by a qualified dosimetry processor as described in 32 Ill. Adm. Code 340.510(d); and

- 2) A pocket ionization chamber capable of measuring doses from zero to at least 51.6 microC/kg (200 mR).

(Source: Amended by emergency rulemaking at 22 Ill. Reg. **21097**, effective November 17, 1998, for a maximum of 150 days)

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## NOTICE OF EMERGENCY AMENDMENTS

- 1) Heading of the Part: Radiation Safety Requirements for Industrial Radiographic Operations
- 2) Code Citation: 32 Ill. Adm. Code 350
- 3) Section Number:  
350.2030  
350.3045  
Emergency Action:  
Amendment  
Amendment
- 4) Statutory Authority: Implementing and authorized by the Radiation Protection Act of 1990 [420 ILCS 40].
- 5) Effective Date of Amendments: November 17, 1998
- 6) If this emergency amendment is to expire before the end of the 150-day period, please specify the date on which it is to expire: This emergency amendment will expire when the proposed amendment is adopted.
- 7) Date Filed with the Index Department: November 17, 1998
- 8) A copy of all material incorporated by reference is on file at the Department's headquarters located at 1035 Outer Park Drive, Springfield, Illinois and is available for public inspection.
- 9) Reason for the Emergency: The current regulations do not address a dosimetry technology recently approved through a U.S. Department of Commerce accreditation program. The regulations are being modified to allow the immediate use of this new technology and thereby prevent an unnecessary hardship on licensees.
- 10) A Complete Description of the Subjects and Issues Involved: The Department is proposing to modify its rules pertaining to the use of certain types of personnel dosimetry. The current rules authorize the use of film badges and thermoluminescent dosimeters for personnel dosimetry. The U.S. Department of Commerce, National Institutes of Standards and Technology, through the National Voluntary Laboratory Accreditation Program (NVLAP), have accredited a new technology, optically stimulated luminescent (OSL) dosimetry. The Department's rules should not prohibit the use of this new technology, therefore, the rules are being modified to include any dosimetry approved through NVLAP.  
  
The Department's action should not be understood as a desire to limit or preclude public comment. Elsewhere in this issue of the *Illinois Register*, the Department is proposing, for public comment, a general rulemaking that covers the topics included in the Emergency rule.
- 11) Are there any other proposed amendments to this Part pending? No



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NOTICE OF EMERGENCY AMENDMENTS

- 12) Statement of Statewide Policy Objectives: The requirements imposed by the emergency rulemaking are not expected to require local governments to establish, expand, or modify their activities in such a way as to necessitate additional expenditures from local revenues.
- 13) Information and questions regarding this emergency rule shall be directed to:

Robert B. Holtsclaw  
Staff Attorney  
Department of Nuclear Safety  
1035 Outer Park Drive  
Springfield, Illinois 62704  
(217) 524-1003 (voice)  
(217) 782-6133 (TDD)

The full text of the emergency amendments begin on the next page:

DEPARTMENT OF NUCLEAR SAFETY  
NOTICE OF EMERGENCY AMENDMENTS

TITLE 32: ENERGY  
CHAPTER II: DEPARTMENT OF NUCLEAR SAFETY  
SUBCHAPTER b: RADIATION PROTECTION

PART 350

RADIATION SAFETY REQUIREMENTS FOR INDUSTRIAL RADIOGRAPHIC OPERATIONS

SUBPART A: GENERAL PROVISIONS

Section	Purpose
350.10	Scope
350.20	Incorporations by Reference
350.25	Definitions
350.30	Exemptions
350.40	Receipt, Transfer and Disposal of Sources of Radiation
350.50	

SUBPART B: EQUIPMENT CONTROL

Section	Requirements for Radiography Equipment Using Radiographic Exposure Devices
350.1000	Requirements for Radiography Equipment Using Radiographic Exposure Devices
350.1005	Requirements for Radiography Equipment Using Radiation Machines
350.1010	Limits on Levels of Radiation for Radiographic Exposure Devices, Source Changers and Transport Containers
350.1020	Locking of Sources of Radiation
350.1030	Permanent Storage Precautions
350.1040	Radiation Survey Instruments
350.1050	Testing for Leakage or Contamination, Repair, Tagging, Opening, Modification and Replacement of Sealed Sources
350.1060	Quarterly Inventory
350.1070	Utilization Logs
350.1080	Inspection and Maintenance
350.1090	Permanent Radiographic Installations

SUBPART C: PERSONAL RADIATION SAFETY REQUIREMENTS FOR RADIOGRAPHERS AND RADIOGRAPHER TRAINEES

Section	Training and Testing
350.2010	Operating and Emergency Procedures
350.2020	Personnel Monitoring Control
350.2030	Supervision of Radiographer Trainees
350.2040	

SUBPART D: PRECAUTIONARY PROCEDURES IN RADIOGRAPHIC OPERATIONS

Section

## DEPARTMENT OF NUCLEAR SAFETY

## NOTICE OF EMERGENCY AMENDMENTS

- 350.3010 Access Control and Security
- 350.3020 Posting
- 350.3030 Radiation Surveys and Survey Records
- 350.3040 Records Required at Temporary Job Sites
- 350.3045 Operating Requirements
- EMERGENCY**
- 350.3048 Notification of Incidents
- 350.3050 Special Requirements and Exemptions for Enclosed Radiography Systems
- 350.3060 Special Requirements and Exemptions for Enclosed Radiography Systems, other than those Described in Section 350.3050 that are Designed to Allow Admittance of Individuals (Repealed)
- 350.3070 Special Requirements and Exemptions for Certified and Non-Certified Cabinet X-Ray Systems Designed to Exclude Individuals (Repealed)
- 350.3080 Special Requirements for Mobile or Portable Radiation Machines (Repealed)
- 350.3090 Special Requirements for Underwater and Lay-Barge Radiography
- 350.4000 Prohibitions
- 350.4010 Licensing and Registration Requirements for Industrial Radiographic Operations
- 350.4020 Radiation Safety Officer
- 350.4030 Reciprocity

- APPENDIX A** Subjects to be Covered During the Instruction of Radiographers (Repealed)
- APPENDIX B** General Requirements for Inspection of Industrial Radiographic Equipment
- APPENDIX C** Retention Requirements for Records

**AUTHORITY:** Implementing and authorized by the Radiation Protection Act of 1990 [420 ILCS 40].

**SOURCE:** Filed and effective April 20, 1974, by the Department of Public Health; transferred to the Department of Nuclear Safety by P.A. 81-1516, effective December 3, 1980; codified at 7 Ill. Reg. 14744; recodified at 10 Ill. Reg. 11265; amended at 10 Ill. Reg. 17287, effective September 25, 1986; amended at 13 Ill. Reg. 13592, effective August 11, 1989; amended at 18 Ill. Reg. 7263, effective May 2, 1994; expedited correction at 18 Ill. Reg. 10943, effective May 2, 1994; amended at 19 Ill. Reg. 8250, effective June 12, 1995; amended at 19 Ill. Reg. 16591, effective November 27, 1995; emergency amendment at 22 Ill. Reg. ~~21101~~ <sup>21101</sup>, effective November 17, 1998, for a maximum of 150 days.

SUBPART C: PERSONAL RADIATION SAFETY REQUIREMENTS FOR RADIOGRAPHERS AND RADIOGRAPHER TRAINEES

Section 350.2030 Personnel Monitoring Control

**EMERGENCY**

## DEPARTMENT OF NUCLEAR SAFETY

## NOTICE OF EMERGENCY AMENDMENTS

- a) The licensee or registrant shall not permit any individual to act as a radiographer or as a radiographer trainee unless, at all times during radiographic operations, each such individual wears a direct reading pocket ionization chamber (i.e., pocket dosimeter) and an individual monitoring device provided and evaluated by a qualified dosimetry processor as described in 32 Ill. Adm. Code 340.510(d) either ~~a-film badge-or-a-thermoluminescent-dosimeter-(TLD)-~~ Each such device ~~film badge-or-TLD~~ shall be assigned to and worn by only one individual.
- b) Pocket ionization chambers (i.e., pocket dosimeters) shall meet the criteria in ANSI N13.5-1972, "Performance Specifications for Direct Reading and Indirect Reading Pocket Dosimeters for X- and Gamma Radiation" published 1972, exclusive of subsequent amendments or editions.
- c) The use of pocket ionization chambers (i.e., pocket dosimeters) is subject to the following requirements:
- 1) Pocket ionization chambers shall be recharged at least daily or at least at the start of each work shift;
  - 2) Pocket ionization chambers shall be read and exposures recorded at least at the beginning and end of each worker's shift involving the use of a source of radiation;
  - 3) Pocket ionization chambers shall be checked for correct response to radiation at periods not to exceed 1 year. Acceptable dosimeters shall read within plus or minus 30 percent of the true radiation exposure. Records of pocket ionization chamber (i.e., pocket dosimeter) calibrations shall be maintained for inspection by the Department for 5 years; and
  - 4) If an individual's pocket ionization chamber is discharged beyond its range (i.e., goes "off-scale"), industrial radiographic operations by that individual shall cease immediately and the individual's monitoring device ~~film-badge-or-TLD~~ shall be sent immediately for processing. The individual shall not use sources of radiation until the individual's radiation dose has been determined.
- d) Reports received from the individual monitoring device ~~film-badge-or-TLD~~ processor and records of daily pocket ionization chamber (i.e., pocket dosimeter) readings shall be kept for inspection by the Department until the radioactive material license or certificate of registration is terminated or until the Department authorizes their disposition, in writing, following a determination by the Department that the records contain inaccurate personnel monitoring information.
- e) In addition to other requirements of this Section, each individual performing radiography with sealed sources at a location other than a permanent radiography installation shall wear an alarm ratemeter. Each alarm ratemeter shall:
- 1) Be checked prior to use at the start of each shift to ensure that the alarm functions properly (sounds);
  - 2) Be set to give an alarm signal at a preset dose rate of 5mSv (500 mrem) per hour or less;

## DEPARTMENT OF NUCLEAR SAFETY

## NOTICE OF EMERGENCY AMENDMENTS

- 3) Require special means to change the preset alarm function; and
- 4) Be calibrated, at periods not to exceed 1 year, for correct response to radiation. Rateometers shall alarm within plus or minus 20 percent of the true radiation dose rate. Records of alarm rateometer calibrations shall be maintained for inspection by the Department for 5 years.
- f) The alarm rateometer shall be used in addition to, and not as a substitute for, the portable survey instrument required by Section 350.3030. The alarm rateometer is intended to provide additional assurance that the radiation exposure levels are within regulatory limits.

(Source: Amended by emergency rulemaking at 22 Ill. Reg. 21101, effective November 17, 1998, for a maximum of 150 days)

## SUBPART D: PRECAUTIONARY PROCEDURES IN RADIOGRAPHIC OPERATIONS

Section 350.3045 Operating Requirements  
EMERGENCY

- a) When radiography is performed at a location other than a permanent radiographic installation, a minimum of two radiographic personnel shall be present to operate the radiographic exposure device. At least one of the radiographic personnel shall be a radiographer. The other radiographic personnel may be either a radiographer or radiographer trainee.
- b) Collimators shall be used in industrial radiographic systems that use crank-out devices except when physically impossible.
- c) Other than a radiographer, or a radiographer trainee who is under the personal supervision of a radiographer, no person shall manipulate controls or operate equipment used in industrial radiographic operations.
- d) At each job site, the following shall be supplied by the licensee or registrant:
  - 1) The appropriate barrier ropes and signs;
  - 2) At least one operable, calibrated survey instrument;
  - 3) A current whole body individual monitoring device ~~(TSD-01-FTM badge)~~ for each worker; and
  - 4) An operable, calibrated pocket ionization chamber (i.e., pocket dosimeter) with a range of zero to 51.6 micro C/kg (200 mR) for each worker.
- e) Each worker who performs industrial radiography with a sealed source at a location other than a permanent radiography installation shall have on his or her person an operable, calibrated alarm rateometer.
- f) Each radiographer or radiographer trainee at a job site shall have on his or her person a valid industrial radiographer certification card issued by the Department pursuant to the provisions of 32 Ill. Adm. Code 405.

## DEPARTMENT OF NUCLEAR SAFETY

## NOTICE OF EMERGENCY AMENDMENTS

- g) Industrial radiographic operations shall not be performed if any of the items in subsections (d), (e) and (f) of this Section above are unavailable at the job site or are inoperable.

(Source: Amended by emergency rulemaking at 22 Ill. Reg. 21101, effective November 17, 1998, for a maximum of 150 days)



## DEPARTMENT OF NUCLEAR SAFETY

## NOTICE OF EMERGENCY AMENDMENT

1) Heading of the Part: Radiation Safety Requirements for Wireline Service Operations and Subsurface Tracer Studies

2) Code Citation: 32 Ill. Adm. Code 351

3) Section Number: 351.2030  
Emergency Action:  
Amendment

4) Statutory Authority: Implementing and authorized by Sections 9 and 11 of the Radiation Protection Act of 1990 [420 ILCS 40/9 and 11] and Section 5 of the Personnel Radiation Monitoring Act [420 ILCS 25/5].

5) Effective Date of Amendments: November 17, 1998

6) If this emergency amendment is to expire before the end of the 150-day period, please specify the date on which it is to expire: This emergency amendment will expire when the proposed amendment is adopted.

7) Date Filed with the Index Department: November 17, 1998

8) A copy of all material incorporated by reference is on file at the Department's headquarters located at 1035 Outer Park Drive, Springfield, Illinois and is available for public inspection.

9) Reason for the Emergency: The current regulations do not address a dosimetry technology recently approved through a U.S. Department of Commerce accreditation program. The regulations are being modified to allow the immediate use of this new technology and thereby prevent an unnecessary hardship on licensees.

10) A Complete Description of the Subjects and Issues Involved: The Department is proposing to modify its rules pertaining to the use of certain types of personnel dosimetry. The current rules authorize the use of film badges and thermoluminescent dosimeters for personnel dosimetry. The U.S. Department of Commerce, National Institutes of Standards and Technology, through the National Voluntary Laboratory Accreditation Program (NVLAP), have accredited a new technology, optically stimulated luminescent (OSL) dosimetry. The Department's rules should not prohibit the use of this new technology, therefore, the rules are being modified to include any dosimetry approved through NVLAP.

The Department's action should not be understood as a desire to limit or preclude public comment. Elsewhere in this issue of the *Illinois Register*, the Department is proposing, for public comment, a general rulemaking that covers the topics included in the Emergency rule.

11) Are there any other proposed amendments to this Part pending? No

## DEPARTMENT OF NUCLEAR SAFETY

## NOTICE OF EMERGENCY AMENDMENT

12) Statement of Statewide Policy Objectives: The requirements imposed by the emergency rulemaking are not expected to require local governments to establish, expand, or modify their activities in such a way as to necessitate additional expenditures from local revenues.

13) Information and questions regarding this emergency rule shall be directed to:

Robert B. Holtsclaw  
Staff Attorney  
Department of Nuclear Safety  
1035 Outer Park Drive  
Springfield, Illinois 62704  
(217) 524-1003 (voice)  
(217) 782-6133 (TDD)

The full text of the Emergency Amendments begin on the next page:

DEPARTMENT OF NUCLEAR SAFETY  
NOTICE OF EMERGENCY AMENDMENT

TITLE 32: ENERGY  
CHAPTER II: DEPARTMENT OF NUCLEAR SAFETY  
SUBCHAPTER b: RADIATION PROTECTION

PART 351  
RADIATION SAFETY REQUIREMENTS FOR WIRELINE  
SERVICE OPERATIONS AND SUBSURFACE TRACER STUDIES

Section	Purpose
351.10	Scope
351.20	Incorporations by Reference
351.25	Definitions
351.30	Prohibition
351.40	Limits on Levels of Radiation
351.1010	Storage Precautions
351.1020	Transport Precautions
351.1030	Radiation Survey Instruments
351.1040	Testing for Leakage or Contamination of Sealed Sources
351.1050	Quarterly Inventory
351.1060	Utilization Records
351.1070	Design and Performance Criteria for Sealed Sources Used in Downhole Operations
351.1080	Labeling
351.1090	Inspection and Maintenance
351.1100	Training Requirements
351.2010	Operating and Emergency Procedures
351.2020	Personnel Monitoring
351.2030	Security

351.3010	Handling Tools
351.3020	Subsurface Tracer Studies
351.3030	Particle Accelerators
351.3040	Radiation Surveys
351.4010	Documents and Records Required at Field Stations
351.4020	Documents and Records Required at Temporary Jobsites
351.4030	Notification of Incidents, Abandonment and Lost Sources
351.5010	Subjects To Be Included in Training Courses For Logging Supervisors
APPENDIX A	Example of Procedure for Identifying Wells Containing Sealed Sources Containing Radioactive Material Abandoned Downhole
APPENDIX B	

AUTHORITY: Implementing and authorized by Sections 9 and 11 of the Radiation Protection Act of 1990 [420 ILCS 40/9 and 11] and Section 5 of the Personnel Radiation Monitoring Act [420 ILCS 25/5].

SOURCE: Adopted at 10 Ill. Reg. 17507, effective September 25, 1986; amended at 11 Ill. Reg. 5215, effective March 13, 1987; amended at 13 Ill. Reg. 13605,

DEPARTMENT OF NUCLEAR SAFETY  
NOTICE OF EMERGENCY AMENDMENT

effective August 11, 1989; amended at 14 Ill. Reg. 13633, effective August 13, 1990; amended at 18 Ill. Reg. 3344, effective February 22, 1994; emergency amendment at 23 Ill. Reg. 21108, effective November 17, 1998, for a maximum of 150 days.

Section 351.2030 Personnel Monitoring  
EMERGENCY

- a) No licensee or registrant shall permit any individual to act as a logging supervisor or to assist in the handling of sources of radiation unless each such individual wears an individual monitoring device provided and evaluated by a qualified dosimetry processor as described in 32 Ill. Adm. Code 340.510(d) either a--film--badge--or--a thermoluminescent--dosimeter--(TLD). Each such device film--badge--or--TLD shall be assigned to and worn by only one individual.
- b) Records of individual monitoring results shall be retained in accordance with 32 Ill. Adm. Code 340.1160.

(Source: Amended by emergency rulemaking at 23 Ill. Reg. 21108, effective November 17, 1998, for a maximum of 150 days)

## SECRETARY OF STATE

## NOTICE OF EMERGENCY AMENDMENTS

- 1) Heading of the Part: The Illinois State Library Training Program Grants  
2) Code Citation: 23 Ill. Adm. Code 3070

Emergency Action:

- 3) Section Numbers:  
3070.100 Amendment  
3070.110 Amendment  
3070.130 Amendment  
3070.140 Amendment  
3070.160 Amendment  
3070.170 Amendment

- 4) Statutory Authority: Implementing and authorized by Sections 2 and 7(q) of the State Library Act [15 ILCS 320] and the Library Services and Technology Act (920 USC 9121 et seq.).

- 5) Effective Date of Amendments: November 17, 1998

- 6) If this emergency amendment is to expire before the end of the 150-day period, please specify the date on which it is to expire: Not applicable

- 7) Date Filed with the Index Department: November 17, 1998

- 8) A copy of the adopted amendments, including any material incorporated by reference is available for public inspection at the Illinois State Library reference desk, 2nd floor, Illinois State Library, 300 S. Second Street, Springfield.

- 9) Reason for Emergency: The rule changes enable the Illinois State Library to allow training grant recipients to meet their work requirement in a broader choice of libraries and library systems.

- 10) A complete description of the Subjects and Issues involved: Allows training grant recipients to meet the work requirement in public and non-public libraries. Allows applicants to attend any graduate library school accredited by the American Library Association.

- 11) Are there any proposed amendments pending for this Part? No

- 12) Statement of Statewide Policy Objectives: This rulemaking does not create or expand a State mandate.

- 13) Information and questions regarding this adopted amendment shall be directed to:

Ms. Kathleen L. Bloomberg  
Associate Director for Communications & Planning  
Illinois State Library

## SECRETARY OF STATE

## NOTICE OF EMERGENCY AMENDMENTS

300 South Second Street  
Springfield IL 62701-1796  
(217) 785-0052  
(217) 782-8261 FAX  
kbloom@library.sos.state.il.us INTERNET

The full text of the emergency amendments begins on the next page:



## SECRETARY OF STATE

## NOTICE OF EMERGENCY AMENDMENTS

TITLE 23: EDUCATION AND CULTURAL RESOURCES  
SUBTITLE B: CULTURAL RESOURCES  
CHAPTER I: SECRETARY OF STATEPART 3070  
THE ILLINOIS STATE LIBRARY  
TRAINING PROGRAM GRANTS

Section	Purpose
3070.100	Purpose
EMERGENCY	
3070.110	Definitions
EMERGENCY	
3070.120	Number and Amount of Training Program Grants
3070.130	Illinois Library Schools and Attendance Requirements
EMERGENCY	
3070.140	Eligibility Requirements
EMERGENCY	
3070.150	Application Process
3070.160	Selection of Training Program Grantees
EMERGENCY	
3070.170	Conditions of Training Program Grants
EMERGENCY	

AUTHORITY: Implementing and authorized by Sections 2 and 7(q) of the State Library Act [15 ILCS 320/2 and 7(q)] and the Library Services and Technology Act (20 USC 9121 et seq.).

SOURCE: Adopted at 12 Ill. Reg. 1915, effective January 1, 1988; amended at 18 Ill. Reg. 4981, effective March 14, 1994; emergency amendment at 22 Ill. Reg. 21112 effective November 17, 1998.

## Section 3070.100 Purpose

## EMERGENCY

- a) The Illinois State Library Training Program Grants, which assist Illinois residents to obtain a Masters Degree in Library and Information Science are hereby established by the Secretary of State.
- b) The purposes of the library Training Program Grants are to encourage college graduates with demonstrated scholarship, talent, and potential to enter the library profession, to encourage these new librarians to work in Illinois libraries, and to improve and stimulate development of public library service in Illinois.
- c) The State Library shall administer the State Library Training Program Grants.

(Source: Amended by emergency rulemaking at 22 Ill. Reg. 21112, effective November 17, 1998, for a maximum of 150 days)

## SECRETARY OF STATE

## NOTICE OF EMERGENCY AMENDMENTS

Section 3070.110 Definitions  
EMERGENCY

"Academic Year" shall mean the instruction period from September of one calendar year until June of the following calendar year, unless grantee has requested to begin studies with summer enrollment.

"Applicant" shall mean the person who applies for Illinois State Library training grant and who has not begun the program for a Masters Degree in Library and Information Science.

"C-Average" shall mean the median grade on a letter grading system at the Illinois graduate library schools, or a 2.0 grade on a 4.0 grade scale, or a 3.0 grade on a 5.0 grade scale.

"Director" shall mean the Director of the Illinois State Library.

"Grant" shall mean a Training Program Grant being awarded under this Part.

"Illinois Library and Information Network 'ILLINET' Library" shall mean a library that is a member of an Illinois library system.

"Library" shall mean an entity that serves the basic information and library needs of its constituents through a bibliographically organized collection of library materials and has at least one employee who works at least 15 hours per week as librarian. The collection must have permanent financial support, be accessible centrally and occupy identifiable quarters in one principal location.

"Library System" shall mean an organization of libraries established under the Illinois Library System Act [75 ILCS 101].

"MLS" shall mean a program for the Masters Degree in Library and Information Science in which the applicant is enrolled and for which the training grant is awarded.

"Public-library" shall mean a tax-supported public library established by or as a governmental unit which either is authorized to levy a tax for library purposes or which supports the library at least in part from local tax revenues other than federal revenue sharing. Such a library is established by a city, village, incorporated township, county, or library district under the Illinois Local Library Act [111 Rev. Stat. 1917, ch. 81, par. 1-6, et seq.] [75 ILCS 517-1, et seq.] [111 Rev. Stat. 1917, ch. 81, par. 16c, et seq.] [75 ILCS 481, Public-County Library Service Act [111 Rev. Stat. 1917, ch. 34, par. 5-39881, et seq.] [75 ILCS 5/Div. 5-381, Village Library Conversion Act [111 Rev. Stat. 1917, ch. 81, par. 27-32] [75 ILCS

## SECRETARY OF STATE

## NOTICE OF EMERGENCY AMENDMENTS

437 History-Property-Statute (11-Rev-Stat-1991-ch-01-pass-20-  
 11-seq-175-HCS-51)-and-plaintiffs-but-a-history-property-  
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 11)-definition-of-free public-trusts-established-by-villages  
 but-not-approved-at-1853-a-part-a-total-tax-exemption-and  
 incorporated-free public-trusts-not-established-by-a government  
 trust-

"Resident of Illinois" shall mean a person who is domiciled in Illinois for one calendar year prior to application, or a person who is a domiciliary of Illinois and votes in Illinois but is attending a school of higher education ~~an--undergraduate--school~~ outside of Illinois.

"Secretary of State" or "Secretary" shall mean the Illinois Secretary of State, who is the State Librarian.

"State Library" shall mean the Illinois State Library, as established pursuant to the State Library Act (Ill.-Rev.-Stat.-1991-Ch.-1207, paras.-101-et-seq.) [15 ILCS 320].

"Training Program" shall mean the Illinois State Library Training Program, as established by this Part.

(Source: Amended by emergency rulemaking at 22 Ill. Reg. effective November 17, 1998, for a maximum of 150 days)

## Section 3070.130 Illinois Library Schools and Attendance Requirements

**EMERGENCY**

at---The grant shall be awarded only to individuals students who will attend an American Library Association accredited graduate school in Illinois.

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(Source: Amended by emergency rulemaking at 22 Ill. Reg. effective November 17, 1998, for a maximum of 150 days) **2112**

## Section 3070.140 Eligibility Requirements

**EMERGENCY**

SECRETARY OF STATE

## NOTICE OF EMERGENCY AMENDMENTS

a) Each applicant must be a resident of Illinois and a citizen of the United States or its territories.

b) Each applicant must have received a Bachelor's degree from an accredited college or university, (with a transcript of all academic work submitted to the Illinois State Library).

c) Each applicant must be accepted at a graduate library school in Illinois accredited by the American Library Association.

d) Each applicant must agree to sign an agreement with the State of Illinois, Illinois State Library, consenting to spend the equivalent of two years in full-time Illinois public library service within the first three years following graduation from graduate library school.

e) Each applicant must not have commenced their graduate study for the Master of Library and Information Science.

(Source: Amended by emergency rulemaking at 22 Ill. Reg. effective November 17, 1998, for a maximum of 150 days)

## Section 3070.160 Selection of Training Program Grantees

**EMERGENCY**

a) A grant will be awarded to those applicants (not to exceed 15 per calendar year) who possess the best academic performance, i.e., grade point average, in comparison to the other applicants, and to the applicant's peers in his or her undergraduate school, whose personal interview by the State Library staff and a committee appointed by the Director of the Illinois State Library Advisory Committee's

b) Only applications which are postmarked by May 1 of each calendar year will be considered.

c) The successful grant applicants will be notified by August 1 of each calendar year.

d) The final decision regarding each applicant will be made by the

## SECRETARY OF STATE

## NOTICE OF EMERGENCY AMENDMENTS

Director of the State Library.

(Source: Amended by emergency rulemaking at 22 Ill. Reg. 21118, effective November 17, 1998, for a maximum of 150 days)

**Section 3070.170 Conditions of Training Program Grants**  
**EMERGENCY**

- a) The applicants must submit proof of acceptance but not be enrolled in the graduate library program at a school specified in Section 3070.130(b) of this Part by May 1 of each calendar year. No grant award may be utilized to defray or otherwise reimburse previous study and applicants may not be enrolled in the above-referenced graduate library at the time of submission of said application.
- b) The successful applicant must notify the State Library in writing of his/her proposed date of graduation from the Master of Library and Information Science program at least four (4) months before the date of graduation.
- c) The successful applicant must immediately notify in writing the State Library of other grants or loans being accepted by the applicant.
- d) The successful applicant must commence the Master of Library and Information Science program at the beginning of the next Fall academic semester (unless the grantee has requested to begin studies with summer enrollment), and must continue on a full or a part-time basis with no interruptions or leaves of absence except upon the written approval of the Director of the State Library after consideration of the applicant's written request, i.e., personal emergency, illness, or disability.
- e) Recipient must forward an original or photocopy of the college's or university's official notification of grades of graduate library school courses for each semester of study to the Illinois State Library Training Program Grants Committee within thirty days following the semester's conclusion.
- f) Training Program Grant is subject to cancellation if a grade C average for each semester of graduate library courses is not maintained.
- g) If, for any reason, the grant recipient is unable to complete the required course program and receive the Master of Library and Information Science degree, the recipient must refund the total amount of money received. The grant must also be repaid if the recipient fails to fulfill the personal services agreement for two years of full-time work in a qualifying Illinois library. In the event of other extenuating circumstances (i.e., unplanned, unforeseen crisis, emergencies, or situations beyond the recipient's control), the responsibility of the recipient will be reviewed and determined by the Director of the Illinois State Library.
- h) The recipient must satisfy the requirements of the personal services agreement with the Illinois State Library within the first three years following graduation from graduate library school. The recipient must

## SECRETARY OF STATE

## NOTICE OF EMERGENCY AMENDMENTS

submit to the Illinois State Library proof of employment by an ILLINET Illinois public library, Illinois library system or the Illinois State Library and proof of continued employment in such a library until the two-year work agreement has been fulfilled.

- i) The successful applicant must sign a written agreement evidencing all of these terms and conditions at the time of acceptance of the grant.
- j) The failure, either by neglect or willful misconduct, of the applicant to strictly adhere to the subsections (a) through (i) of this Section shall result in the forfeiture of the grant, and the grant shall be paid back to the State Library. If the two year work agreement is not fulfilled, the recipient shall repay the amount of the grant, or repay a pro-rated amount if only a fraction of the time is worked in a public library. The Director shall send a written paycheck order to the applicant. If the applicant wishes to contest the paycheck order, he or she shall be entitled to request a personal hearing before the Director. The request for a hearing must be made within 30 days after of the date of the paycheck order. The hearing date, time, and location will be stated in a letter to the successful applicant which will be sent within 15 days after of the receipt of the hearing request. The decision after the hearing by the Director is final.
- 1) The grant shall be paid back at the rate of at least \$100-00 per month, commencing within 90 days after of the applicant's leaving the Master's Masters program without successful completion or completion of the public library service agreement.
- 2) No interest on the unpaid balance shall be charged.
- 3) The State Library shall use the offset procedure with the Illinois Comptroller (74 Ill. Adm. Code 285) and the Illinois State Collection Act of 1986 (Ill-Rev-Stat-1991-ch-15-par-151-et-seq) [30 ILCS 210] to collect any unpaid monies due to the State Library by any applicant.

(Source: Amended by emergency rulemaking at 22 Ill. Reg. 21118, effective November 17, 1998, for a maximum of 150 days)



## POLLUTION CONTROL BOARD

## NOTICE OF EXPEDITED CORRECTION

- 1) Heading of the Part: Emission Standards And Limitations For Mobile Sources
- 2) Code Citation: 35 Ill. Adm. Code 240
- 3) Section numbers: 240.Table C
- 4) Date Proposal published in Illinois Register: February 6, 1998, 22 Ill. Reg. 2720
- 5) Date Adoption published in Illinois Register: July 24, 1998, 22 Ill. Reg. 13723
- 6) Date Request for Expedited Correction published in Illinois Register: November 6, 1998, 22 Ill. Reg. 19646
- 7) Adoption Effective Date: July 13, 1998
- 8) Correction Effective Date: July 13, 1998

9) Reason for Approval of Expedited Correction: Table C of Part 240 was adopted by the Board in Board docket R98-24 on July 8, 1998, and published in the Illinois Register at 22 Ill. Reg. 13723 (July 24, 1998). Thereafter, the Joint Committee on Administrative Rules (JCAR) identified several numerical value errors in the published text in Table C, subsection (c), entitled "Vehicle Exhaust Emissions Fast-Pass Standards". The numerical values adopted by the Board on July 8, 1998, differed from the agreement certified by JCAR during the second notice period. See 5 ILCS 100/5-85 (1994). On September 17, 1998, the Board adopted an order to expedite publication of the rules containing the intended numerical values in Table C. The intention to correct these numerical values in subsection (c) was articulated in the Board's final opinion of July 8, 1998. See In the Matter of: Enhanced Vehicle Inspection and Maintenance (I/M) Regulations: Amendments to 35 Ill. Adm. Code 240 (July 8, 1998), R98-24, slip op. at 17-18.

Seven additional numerical errors were identified by the Board in subsections (a), (b), and (c) of Table C. The Board's intent to correct these numerical values in subsections (a), (b), and (c) was articulated in the Board's second notice opinion of May 21, 1998. See In the Matter of: Enhanced Vehicle Inspection and Maintenance (I/M) Regulations: Amendments to 35 Ill. Adm. Code 240 (May 21, 1998), R98-24, slip op. at 3, 17-18.

A final typographical error was made in the hydrocarbon composite at second 212 in subsection (c). The Board inadvertently changed this value from 3.745 to 3.778. It intended to change the numerical value for the hydrocarbon composite at second 213 in subsection (c). Thus, this inadvertent change is a typographical error and the numerical value for

## POLLUTION CONTROL BOARD

## NOTICE OF EXPEDITED CORRECTION

the hydrocarbon composite at second 212 should remain 3.745.

The above mentioned numerical corrections to Table C are required by Sections 182(b) and 182(c) of the Clean Air Act, as amended in 1990 (42 USC Section 7582(b)), Section 7582(c) (1990)), which require the use of enhanced inspection and maintenance (I/M) programs in areas that do not meet the National Ambient Air Quality Standards for ozone or carbon monoxide. Pursuant to Section 5/13B-5 of the Illinois Vehicle Emissions Inspection Law (625 ILCS 5/13B-5 (1996)), Chicago and Metro-East St. Louis are subject to these I/M regulations.

In order to satisfy the requirements of the Clean Air Act, among other things, Illinois was required to adopt fast-pass standards (found at 240.164 and Table C). The United States Environmental Protection Agency (USEPA) developed the fast-pass standards as a tool for prescreening clean vehicles from the I/M exhaust emission test. 57 Fed. Reg. 52950 (November 5, 1992). Table C contains the new vehicle exhaust emission fast-pass standards, and according to Section 240.164, these are the standards to be applied to vehicles that must be inspected pursuant to Section 240.161.

In its posthearing comments during first notice in this rulemaking, the Illinois Environmental Protection Agency noted that it had utilized the outdated guidance when it calculated some of the numerical values in Table C. Upon recalculation utilizing the most recent High Tech Guidance, the Agency concluded that several values needed to be changed. The aforementioned 21 numerical values were inadvertently not corrected in subsections (a), (b), and (c) of the Board's final order dated July 8, 1998; however, the intent to make these corrections is reflected in its second and final notice opinions.

Agency Director November 8, 1998

The full text of the Corrected Rules begins on the following page:

## POLLUTION CONTROL BROAD

## NOTICE OF EXPEDITED CORRECTION

## TITLE 35: ENVIRONMENTAL PROTECTION

## SUBTITLE B: AIR POLLUTION

## CHAPTER I: POLLUTION CONTROL BOARD

SUBCHAPTER k: EMISSION STANDARDS AND LIMITATIONS  
FOR MOBILE SOURCES

## PART 240

## MOBILE SOURCES

## SUBPART A: DEFINITIONS AND GENERAL PROVISIONS

Section  
240.101  
240.102  
240.103  
240.104  
240.105  
240.106  
240.107

## Preamble

## Definitions

## Prohibitions

## Inspection

## Penalties

## Determination of Violation

## Incorporations by Reference

## SUBPART B: EMISSIONS

Section  
240.121  
240.122  
240.123  
240.124  
240.125

## Smoke Emissions

## Diesel Engine Emissions Standards for Locomotives

## Liquid Petroleum Gas Fuel Systems

## Vehicle Exhaust Emission Standards

## Compliance Determination

## SUBPART C: HEAVY-DUTY DIESEL SMOKE OPACITY STANDARDS AND TEST PROCEDURES

Section  
240.140  
240.141

## Applicability

## Heavy-Duty Diesel Vehicle Smoke Opacity Standards and Test Procedures

## SUBPART D: STEADY-STATE IDLE MODE TEST EMISSION STANDARDS

Section  
240.151  
240.152  
240.153

## Applicability

## Steady-State Idle Mode Vehicle Exhaust Emission Standards

## Compliance Determination

## SUBPART E: TRANSIENT LOADED MODE TEST EMISSION STANDARDS

Section  
240.161  
240.162  
240.163

## Applicability

## Vehicle Exhaust Emission Start-Up Standards

## Vehicle Exhaust Emission Final Standards

## POLLUTION CONTROL BROAD

## NOTICE OF EXPEDITED CORRECTION

240.164 Vehicle Exhaust Emission Fast-Pass Standards  
240.165 Compliance Determination

## SUBPART F: EVAPORATIVE TEST STANDARDS

Section  
240.171  
240.172  
240.173

## Applicability

## Evaporative System Integrity Test Standards

## Evaporative System Purge Test Standards (Repealed)

## SUBPART G: ON-ROAD REMOTE SENSING TEST EMISSION STANDARDS

Section  
240.181  
240.182  
240.183

## Applicability

## On-Road Remote Sensing Emission Standards

## Compliance Determination

## SUBPART H: ON-BOARD DIAGNOSTIC TEST STANDARDS

Section  
240.191  
240.192  
240.193

## Applicability

## On-Board Diagnostic Test Standards

## Compliance Determination

## APPENDIX A Rule into Section Table

## APPENDIX B Section into Rule Table

## TABLE A

Vehicle Exhaust Emission Start-Up Standards

## TABLE B

Vehicle Exhaust Emission Final Standards

## TABLE C

Vehicle Exhaust Emission Fast-Pass Standards

AUTHORITY: Implementing Sections 9, 10 and 13 and authorized by Sections 27 and 28.5 of the Environmental Protection Act [415 ILCS 5/9, 10, 13, 27, and 28.5] and Section 13B-20 of the Vehicle Emissions Inspection Law of 1995 [625 ILCS 5/13B-20] (see Section 10 of P.A. 90-475, effective August 16, 1997).

SOURCE: Adopted as Chapter 2: Air Pollution, Part VII: Mobile Sources, filed and effective April 14, 1972; codified at 7 Ill. Reg. 13628; amended in R85-25, at 10 Ill. Reg. 11277, effective June 16, 1986; amended in R90-20 at 16 Ill. Reg. 6184, effective April 7, 1992; amended in R94-20 at 18 Ill. Reg. 18013, effective December 12, 1994; amended in R94-19 at 18 Ill. Reg. 18228, effective December 20, 1994; amended in R98-24 at 22 Ill. Reg. 23723, effective July 13, 1998; expedited correction at 22 Ill. Reg. 21120, effective July 13, 1998.

BOARD NOTE: This Part implements the Environmental Protection Act as of July 1, 1994.

## POLLUTION CONTROL BROAD

## NOTICE OF EXPEDITED CORRECTION

## Section 240.TABLE C Vehicle Exhaust Emission Fast-Pass Standards

- a) Vehicles having composite hydrocarbon emission limitations of less than 1.25 grams per mile, and composite carbon monoxide emission limitations of less than 20.0 grams per mile, in Section 240.Table A or Section 240.Table B:

Second	Hydrocarbons		Carbon Monoxide	
	Composite	Phase 2	Composite	Phase 2
30	0.124	N/A	0.693	N/A
31	0.126	N/A	0.773	N/A
32	0.129	N/A	0.837	N/A
33	0.135	N/A	0.851	N/A
34	0.140	N/A	0.853	N/A
35	0.146	N/A	0.857	N/A
36	0.150	N/A	0.900	N/A
37	0.153	N/A	0.960	N/A
38	0.156	N/A	1.034	N/A
39	0.160	N/A	1.070	N/A
40	0.165	N/A	1.076	N/A
41	0.169	N/A	1.083	N/A
42	0.172	N/A	1.102	N/A
43	0.173	N/A	1.111	N/A
44	0.177	N/A	1.114	N/A
45	0.197	N/A	1.157	N/A
46	0.200	N/A	1.344	N/A
47	0.208	N/A	1.482	N/A
48	0.221	N/A	1.530	N/A
49	0.232	N/A	1.542	N/A
50	0.235	N/A	1.553	N/A
51	0.238	N/A	1.571	N/A
52	0.240	N/A	1.595	N/A
53	0.242	N/A	1.633	N/A
54	0.246	N/A	1.685	N/A
55	0.249	N/A	1.689	N/A
56	0.252	N/A	1.693	N/A
57	0.261	N/A	1.700	N/A
58	0.271	N/A	1.723	N/A
59	0.276	N/A	1.852	N/A
60	0.278	N/A	1.872	N/A
61	0.280	N/A	1.872	N/A
62	0.282	N/A	1.872	N/A
63	0.283	N/A	1.900	N/A
64	0.284	N/A	1.917	N/A
65	0.285	N/A	1.944	N/A
66	0.286	N/A	2.000	N/A
67	0.288	N/A	2.060	N/A
68	0.291	N/A	2.064	N/A

## POLLUTION CONTROL BROAD

## NOTICE OF EXPEDITED CORRECTION

69	0.294	N/A	2.076	N/A
70	0.296	N/A	2.104	N/A
71	0.298	N/A	2.117	N/A
72	0.300	N/A	2.125	N/A
73	0.302	N/A	2.130	N/A
74	0.304	N/A	2.138	N/A
75	0.307	N/A	2.152	N/A
76	0.308	N/A	2.170	N/A
77	0.308	N/A	2.188	N/A
78	0.308	N/A	2.200	N/A
79	0.314	N/A	2.212	N/A
80	0.320	N/A	2.212	N/A
81	0.324	N/A	2.221	N/A
82	0.327	N/A	2.222	N/A
83	0.329	N/A	2.227	N/A
84	0.333	N/A	2.236	N/A
85	0.336	N/A	2.243	N/A
86	0.339	N/A	2.262	N/A
87	0.343	N/A	2.271	N/A
88	0.347	N/A	2.284	N/A
89	0.350	N/A	2.299	N/A
90	0.356	N/A	2.308	N/A
91	0.358	N/A	2.326	N/A
92	0.360	N/A	2.330	N/A
93	0.363	N/A	2.331	N/A
94	0.367	N/A	2.344	N/A
95	0.370	N/A	2.347	N/A
96	0.372	N/A	2.355	N/A
97	0.376	N/A	2.395	N/A
98	0.388	N/A	2.451	N/A
99	0.396	N/A	2.508	N/A
100	0.405	N/A	2.590	N/A
101	0.410	N/A	2.660	N/A
102	0.411	N/A	2.749	N/A
103	0.412	N/A	2.913	N/A
104	0.413	N/A	3.162	N/A
105	0.421	N/A	3.170	N/A
106	0.428	N/A	3.197	N/A
107	0.430	N/A	3.288	N/A
108	0.455	N/A	3.419	N/A
109	0.459	0.015	3.587	0.168
110	0.462	0.017	3.595	0.173
111	0.464	0.021	3.640	0.237
112	0.466	0.024	3.740	0.266
113	0.468	0.024	3.868	0.280
114	0.471	0.025	3.877	0.291
115	0.488	0.026	3.934	0.314
116	0.513	0.029	4.015	0.331



## POLLUTION CONTROL BROAD

## NOTICE OF EXPEDITED CORRECTION

117	0.538	0.032	4.061	0.345
118	0.561	0.035	4.063	0.350
119	0.577	0.035	4.079	0.356
120	0.580	0.036	4.140	0.367
121	0.586	0.038	4.185	0.388
122	0.594	0.040	4.199	0.407
123	0.603	0.041	4.205	0.463
124	0.610	0.042	4.212	0.480
125	0.615	0.042	4.232	0.506
126	0.624	0.042	4.298	0.518
127	0.628	0.045	4.344	0.522
128	0.632	0.046	4.361	0.525
129	0.637	0.046	4.366	0.528
130	0.641	0.049	4.369	0.530
131	0.643	0.050	4.372	0.530
132	0.644	0.052	4.435	0.534
133	0.645	0.054	4.523	0.550
134	0.647	0.054	4.524	0.554
135	0.651	0.054	4.525	0.590
136	0.658	0.055	4.531	0.616
137	0.663	0.055	4.534	0.639
138	0.666	0.056	4.542	0.653
139	0.668	0.059	4.553	0.662
140	0.670	0.061	4.554	0.683
141	0.672	0.061	4.554	0.696
142	0.675	0.061	4.554	0.708
143	0.678	0.063	4.554	0.721
144	0.681	0.064	4.554	0.739
145	0.684	0.065	4.554	0.742
146	0.686	0.066	4.554	0.743
147	0.688	0.067	4.554	0.745
148	0.690	0.068	4.554	0.748
149	0.692	0.069	4.554	0.751
150	0.694	0.070	4.554	0.762
151	0.696	0.071	4.556	0.789
152	0.698	0.072	4.556	0.790
153	0.700	0.073	4.565	0.794
154	0.702	0.073	4.612	0.799
155	0.704	0.074	4.634	0.805
156	0.706	0.077	5.702	0.842
157	0.708	0.079	5.841	0.990
158	0.710	0.082	6.670	1.038
159	0.712	0.082	6.670	1.357
160	0.716	0.086	7.425	1.455
161	0.750	0.095	8.379	1.546
162	0.784	0.107	9.648	1.824
163	0.805	0.115	10.918	2.746
164	0.840	0.122	12.157	3.073

## POLLUTION CONTROL BROAD

## NOTICE OF EXPEDITED CORRECTION

165	0.853	0.127	12.731	3.633
166	0.874	0.159	12.831	4.505
167	0.903	0.186	12.892	4.952
168	0.910	0.189	12.932	5.254
169	0.914	0.200	13.702	5.730
170	0.916	0.220	14.139	6.051
171	0.919	0.236	14.964	6.333
172	0.931	0.247	15.704	6.490
173	0.948	0.257	16.253	6.796
174	0.983	0.267	16.907	7.205
175	1.018	0.283	17.655	8.151
176	1.027	0.295	18.020	8.230
177	1.035	0.312	18.349	8.584
178	1.051	0.318	18.671	8.800
179	1.074	0.323	18.972	8.847
180	1.084	0.337	19.228	8.913
181	1.099	0.345	20.123	9.122
182	1.121	0.350	20.405	9.532
183	1.132	0.359	20.754	10.256
184	1.152	0.387	21.684	10.862
185	1.161	0.398	21.955	10.996
186	1.168	0.400	22.650	11.206
187	1.175	0.402	22.989	11.514
188	1.181	0.405	23.535	11.894
189	1.188	0.418	23.876	12.019
190	1.203	0.429	24.018	12.170
191	1.219	0.442	24.464	12.517
192	1.233	0.457	24.685	12.598
193	1.251	0.473	24.931	12.625
194	1.255	0.487	25.188	12.653
195	1.258	0.501	25.468	12.777
196	1.265	0.510	25.627	12.906
197	1.280	0.512	25.746	12.989
198	1.293	0.514	25.850	13.060
199	1.301	0.516	25.974	13.165
200	1.313	0.518	26.141	13.242
201	1.324	0.527	26.225	13.412
202	1.332	0.540	26.338	13.662
203	1.341	0.547	26.547	13.773
204	1.357	0.553	26.818	13.942
205	1.375	0.559	27.052	14.090
206	1.392	0.563	27.393	14.224
207	1.408	0.567	27.501	14.426
208	1.422	0.571	27.632	14.498
209	1.433	0.575	27.803	14.776
210	1.443	0.579	27.953	14.907
211	1.453	0.595	28.205	14.916
212	1.463	0.605	28.543	15.014

## POLLUTION CONTROL BROAD

## NOTICE OF EXPEDITED CORRECTION

213	1.468	0.614	28.997	15.221																																																																									
214	1.470	0.622	29.000	15.472																																																																									
215	1.474	0.627	29.005	15.555																																																																									
216	1.478	0.638	29.081	15.652																																																																									
217	1.481	0.643	29.281	15.969																																																																									
218	1.484	0.643	29.483	16.028																																																																									
219	1.487	0.645	29.734	16.375																																																																									
220	1.490	0.651	29.803	16.487																																																																									
221	1.493	0.655	29.821	16.524																																																																									
222	1.504	0.663	29.847	16.578																																																																									
223	1.522	0.671	29.862	16.684																																																																									
224	1.547	0.675	29.873	16.755																																																																									
225	1.549	0.684	30.008	16.770																																																																									
226	1.562	0.694	30.126	16.805																																																																									
227	1.574	0.701	30.127	16.865																																																																									
228	1.579	0.702	30.127	16.960																																																																									
229	1.584	0.708	30.208	16.960																																																																									
230	1.589	0.708	30.314	16.962																																																																									
231	1.590	0.709	30.323	16.988																																																																									
232	1.596	0.710	30.325	17.072																																																																									
233	1.598	0.710	30.368	17.094																																																																									
234	1.604	0.711	30.411	17.184																																																																									
235	1.610	0.712	30.416	17.187±89																																																																									
236	1.612	0.712	30.428	17.188																																																																									
237	1.613	0.712	30.430	17.189																																																																									
238	1.614	0.713	30.452	17.241																																																																									
239	1.615	0.716	30.488	17.370																																																																									
b) Vehicles having composite hydrocarbon emission limitations of at least 1.25 grams per mile but less than 2.00 grams per mile, and composite carbon monoxide emission limitations of at least 20.0 grams per mile but less than 30.0 grams per mile, in Section 240. Table A or Section 240. Table B:																																																																													
<table><tr><th colspan="2">Hydrocarbons</th><th colspan="2">Carbon Monoxide</th></tr><tr><th>Second</th><th>Composite</th><th>Composite</th><th>Phase 2</th></tr><tr><td>30</td><td>0.247</td><td>N/A</td><td>1.502</td><td>N/A</td></tr><tr><td>31</td><td>0.253</td><td>N/A</td><td>1.546</td><td>N/A</td></tr><tr><td>32</td><td>0.258</td><td>N/A</td><td>1.568</td><td>N/A</td></tr><tr><td>33</td><td>0.263</td><td>N/A</td><td>1.582</td><td>N/A</td></tr><tr><td>34</td><td>0.268</td><td>N/A</td><td>1.593</td><td>N/A</td></tr><tr><td>35</td><td>0.277</td><td>N/A</td><td>1.602</td><td>N/A</td></tr><tr><td>36</td><td>0.283</td><td>N/A</td><td>1.621</td><td>N/A</td></tr><tr><td>37</td><td>0.293</td><td>N/A</td><td>1.631</td><td>N/A</td></tr><tr><td>38</td><td>0.297</td><td>N/A</td><td>1.702</td><td>N/A</td></tr><tr><td>39</td><td>0.298</td><td>N/A</td><td>1.784</td><td>N/A</td></tr><tr><td>40</td><td>0.313</td><td>N/A</td><td>1.879</td><td>N/A</td></tr><tr><td>41</td><td>0.320</td><td>N/A</td><td>2.162</td><td>N/A</td></tr><tr><td>42</td><td>0.327</td><td>N/A</td><td>2.307</td><td>N/A</td></tr></table>					Hydrocarbons		Carbon Monoxide		Second	Composite	Composite	Phase 2	30	0.247	N/A	1.502	N/A	31	0.253	N/A	1.546	N/A	32	0.258	N/A	1.568	N/A	33	0.263	N/A	1.582	N/A	34	0.268	N/A	1.593	N/A	35	0.277	N/A	1.602	N/A	36	0.283	N/A	1.621	N/A	37	0.293	N/A	1.631	N/A	38	0.297	N/A	1.702	N/A	39	0.298	N/A	1.784	N/A	40	0.313	N/A	1.879	N/A	41	0.320	N/A	2.162	N/A	42	0.327	N/A	2.307	N/A
Hydrocarbons		Carbon Monoxide																																																																											
Second	Composite	Composite	Phase 2																																																																										
30	0.247	N/A	1.502	N/A																																																																									
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40	0.313	N/A	1.879	N/A																																																																									
41	0.320	N/A	2.162	N/A																																																																									
42	0.327	N/A	2.307	N/A																																																																									

## POLLUTION CONTROL BROAD

## NOTICE OF EXPEDITED CORRECTION

43	0.342	N/A	2.343	N/A
44	0.360	N/A	2.376	N/A
45	0.376	N/A	2.406	N/A
46	0.389	N/A	2.433	N/A
47	0.408	N/A	2.458	N/A
48	0.423	N/A	2.483	N/A
49	0.434	N/A	2.774	N/A
50	0.444	N/A	2.844	N/A
51	0.454	N/A	2.900	N/A
52	0.465	N/A	2.936	N/A
53	0.472	N/A	3.133	N/A
54	0.478	N/A	3.304	N/A
55	0.485	N/A	3.407	N/A
56	0.493	N/A	3.456	N/A
57	0.500	N/A	3.480	N/A
58	0.505	N/A	3.518	N/A
59	0.514	N/A	3.560	N/A
60	0.537	N/A	3.593	N/A
61	0.540	N/A	3.628	N/A
62	0.546	N/A	3.641	N/A
63	0.546	N/A	3.655	N/A
64	0.551	N/A	3.680	N/A
65	0.559	N/A	3.700	N/A
66	0.567	N/A	3.728	N/A
67	0.575	N/A	3.857	N/A
68	0.588	N/A	3.894	N/A
69	0.595	N/A	3.943	N/A
70	0.601	N/A	3.983	N/A
71	0.606	N/A	4.009	N/A
72	0.610	N/A	4.023	N/A
73	0.617	N/A	4.023	N/A
74	0.631	N/A	4.053	N/A
75	0.643	N/A	4.063	N/A
76	0.651	N/A	4.077	N/A
77	0.659	N/A	4.225	N/A
78	0.667	N/A	4.243	N/A
79	0.676	N/A	4.260	N/A
80	0.681	N/A	4.282	N/A
81	0.685	N/A	4.322	N/A
82	0.689	N/A	4.398	N/A
83	0.694	N/A	4.482	N/A
84	0.700	N/A	4.515	N/A
85	0.705	N/A	4.518	N/A
86	0.709	N/A	4.520	N/A
87	0.713	N/A	4.522	N/A
88	0.717	N/A	4.522	N/A
89	0.721	N/A	4.523	N/A
90	0.724	N/A	4.526	N/A

## POLLUTION CONTROL BROAD

## NOTICE OF EXPEDITED CORRECTION

91	0.727	N/A	4.527	N/A	139	1.186	0.146	9.389	0.804
92	0.729	N/A	4.527	N/A	140	1.253	0.149	9.493	0.810
93	0.731	N/A	4.528	N/A	141	1.262	0.151	9.583	0.815
94	0.734	N/A	4.528	N/A	142	1.271	0.153	9.626	0.818
95	0.740	N/A	4.528	N/A	143	1.277	0.155	9.669	0.821
96	0.748	N/A	4.529	N/A	144	1.283	0.157	9.716	0.825
97	0.759	N/A	4.575	N/A	145	1.291	0.162	9.763	0.840
98	0.771	N/A	4.703	N/A	146	1.294	0.164	9.809	0.847
99	0.783	N/A	4.805	N/A	147	1.296	0.166	9.852	0.855
100	0.793	N/A	4.886	N/A	148	1.298	0.168	9.885	0.865
101	0.810	N/A	4.957	N/A	149	1.303	0.169	9.932	0.874
102	0.823	N/A	5.104	N/A	150	1.316	0.170	9.986	0.891
103	0.836	N/A	5.340	N/A	151	1.330	0.171	10.039	0.914
104	0.853	N/A	5.496	N/A	152	1.342	0.172	10.072	0.929
105	0.871	N/A	5.625	N/A	153	1.348	0.173	10.090	0.937
106	0.887	N/A	5.815	N/A	154	1.353	0.175	10.105	0.942
107	0.899	N/A	6.473	N/A	155	1.362	0.178	10.146	0.949
108	0.931	N/A	7.037	N/A	156	1.366	0.180	10.245	1.375
109	0.947	0.040	7.419	0.246	157	1.373	0.198	10.397	1.576
110	0.957	0.047	7.643	0.257	158	1.397	0.203	10.923	1.943
111	0.965	0.052	7.759	0.286	159	1.422	0.207	11.970	2.820
112	0.971	0.056	7.824	0.379	160	1.440	0.214	13.421	3.281
113	0.977	0.061	7.889	0.425	161	1.452	0.221	15.289	3.483
114	0.983	0.064	7.960	0.457	162	1.465	0.229	15.912	3.620
115	1.003	0.072	8.024	0.477	163	1.465	0.247	16.530	4.168
116	1.030	0.081	8.076	0.494	164	1.509	0.247	17.622	4.338
117	1.041	0.082	8.111	0.504	165	1.533	0.274	18.366	4.682
118	1.050	0.083	8.130	0.512	166	1.555	0.309	19.869	5.633
119	1.052	0.092	8.148	0.519	167	1.576	0.318	20.711	6.137
120	1.055	0.094	8.211	0.529	168	1.598	0.322	22.319	6.853
121	1.061	0.097	8.478	0.529	169	1.618	0.333	23.751	7.136
122	1.071	0.100	8.548	0.530	170	1.636	0.343	24.842	7.320
123	1.081	0.103	8.561	0.531	171	1.666	0.356	25.410	7.685
124	1.091	0.106	8.568	0.532	172	1.685	0.385	25.798	8.052
125	1.102	0.108	8.572	0.533	173	1.726	0.409	26.122	8.344
126	1.110	0.110	8.584	0.548	174	1.742	0.433	26.353	8.602
127	1.116	0.112	8.592	0.610	175	1.756	0.453	26.638	8.898
128	1.121	0.114	8.596	0.614	176	1.769	0.463	27.219	9.251
129	1.125	0.116	8.597	0.622	177	1.784	0.507	27.279	10.253
130	1.128	0.118	8.601	0.631	178	1.802	0.523	27.320	10.828
131	1.130	0.120	8.605	0.640	179	1.822	0.528	27.352	10.933
132	1.132	0.122	8.608	0.646	180	1.843	0.541	27.822	11.060
133	1.134	0.123	8.626	0.650	181	1.864	0.549	28.763	11.188
134	1.135	0.124	8.650	0.652	182	1.884	0.559	29.402	11.345
135	1.143	0.127	8.660	0.738	183	1.896	0.571	29.971	11.733
136	1.147	0.130	8.767	0.754	184	1.915	0.584	30.276	12.598
137	1.156	0.134	9.029	0.780	185	1.940	0.598	30.988	12.953
138	1.163	0.139	9.238	0.795	186	1.958	0.613	31.095	13.213

## POLLUTION CONTROL BROAD

## NOTICE OF EXPEDITED CORRECTION

139	1.186	0.146	9.389	0.804
140	1.253	0.149	9.493	0.810
141	1.262	0.151	9.583	0.815
142	1.271	0.153	9.626	0.818
143	1.277	0.155	9.669	0.821
144	1.283	0.157	9.716	0.825
145	1.291	0.162	9.763	0.840
146	1.294	0.164	9.809	0.847
147	1.296	0.166	9.852	0.855
148	1.298	0.168	9.885	0.865
149	1.303	0.169	9.932	0.874
150	1.316	0.170	9.986	0.891
151	1.330	0.171	10.039	0.914
152	1.342	0.172	10.072	0.929
153	1.348	0.173	10.090	0.937
154	1.353	0.175	10.105	0.942
155	1.362	0.178	10.146	0.949
156	1.366	0.180	10.245	1.375
157	1.373	0.189	10.397	1.576
158	1.397	0.198	10.923	1.943
159	1.422	0.203	11.970	2.820
160	1.440	0.207	13.421	3.281
161	1.452	0.214	15.289	3.483
162	1.465	0.221	15.912	3.620
163	1.465	0.229	16.530	4.168
164	1.509	0.247	17.622	4.338
165	1.533	0.274	18.366	4.682
166	1.555	0.309	19.869	5.633
167	1.576	0.318	20.711	6.137
168	1.598	0.322	22.319	6.853
169	1.618	0.333	23.751	7.136
170	1.636	0.343	24.842	7.320
171	1.666	0.356	25.410	7.685
172	1.685	0.385	25.798	8.052
173	1.726	0.409	26.122	8.344
174	1.742	0.433	26.353	8.602
175	1.756	0.453	26.638	8.898
176	1.769	0.463	27.219	9.251
177	1.784	0.507	27.279	10.253
178	1.802	0.523	27.320	10.828
179	1.822	0.528	27.352	10.933
180	1.843	0.541	27.822	11.060
181	1.864	0.549	28.763	11.188
182	1.884	0.559	29.402	11.345
183	1.896	0.571	29.971	11.733
184	1.915	0.584	30.276	12.598
185	1.940	0.598	30.988	12.953
186	1.958	0.613	31.095	13.213



## POLLUTION CONTROL BOARD

## NOTICE OF EXPEDITED CORRECTION

187	1.972	0.624	31.314	14.131
188	1.985	0.629	31.833	14.839
189	1.991	0.629	32.239	15.137
190	1.993	0.638	32.547	15.138
191	1.995	0.648	32.855	15.141
192	2.001	0.659	33.153	15.595
193	2.015	0.663	33.444	15.658
194	2.031	0.671	33.482	15.704
195	2.047	0.681	33.516	15.729
196	2.063	0.693	33.549	16.058
197	2.079	0.709	33.653	16.987
198	2.094	0.725	33.973	17.064
199	2.109	0.740	34.159	17.073
200	2.122	0.754	34.191	17.153
201	2.130	0.767	34.250	17.332
202	2.137	0.775	34.469	17.406
203	2.157	0.787	34.716	17.641
204	2.172	0.795	34.969	17.922
205	2.194	0.803	35.144	18.484
206	2.222	0.854	35.418	18.553
207	2.245	0.859	35.766	18.658
208	2.268	0.872	35.949	18.953
209	2.279	0.892	36.010	19.266
210	2.288	0.896	36.548	19.309
211	2.301	0.903	37.179	19.731
212	2.316	0.924	37.651	19.902
213	2.332	0.938	38.041	20.012
214	2.345	0.941	38.591	20.260
215	2.354	0.951	38.852	20.739
216	2.362	0.966	38.861	21.346
217	2.368	0.979	38.926	21.810
218	2.376	0.980	39.194	22.001
219	2.384	0.981	39.474	22.290
220	2.391	1.005	39.668	22.324
221	2.395	1.016	39.781	22.343
222	2.400	1.022	39.890	22.522
223	2.405	1.028	39.954	22.661
224	2.409	1.035	39.984	22.666
225	2.413	1.041	39.989	22.667
226	2.415	1.045	39.990	22.668
227	2.417	1.051	39.990	22.669
228	2.419	1.055	39.990	22.670
229	2.420	1.059	39.991	22.671
230	2.421	1.062	40.012	22.671
231	2.423	1.063	40.061	22.672
232	2.425	1.063	40.116	22.673
233	2.427	1.063	40.249	22.673
234	2.429	1.064	40.253	22.673

## POLLUTION CONTROL BOARD

## NOTICE OF EXPEDITED CORRECTION

235	2.430	1.064	40.290	2322.674
236	2.431	1.066	40.385	2322.675
237	2.432	1.069	40.488	2322.675
238	2.433	1.072	40.720	2322.675
239	2.434	1.075	40.763	2322.677

c) Vehicles having composite hydrocarbon emission limitations of 2.00 grams per mile or greater, and composite carbon monoxide emission limitations of 30.0 grams per mile or greater in Section 240. Table A or Section 240. Table B:

Second	Hydrocarbons		Carbon Monoxide	
	Composite	Phase 2	Composite	Phase 2
30	0.407	N/A	3.804	N/A
31	0.415	N/A	3.985	N/A
32	0.423	N/A	4.215	N/A
33	0.436	N/A	4.440	N/A
34	0.451	N/A	4.579	N/A
35	0.464	N/A	4.688	N/A
36	0.468	N/A	4.749	N/A
37	0.475	N/A	4.783	N/A
38	0.487	N/A	4.813	N/A
39	0.506	N/A	4.876	N/A
40	0.530	N/A	5.104	N/A
41	0.549	N/A	5.217	N/A
42	0.569	N/A	5.383	N/A
43	0.588	N/A	5.571	N/A
44	0.609	N/A	5.888	N/A
45	0.621	N/A	6.199	N/A
46	0.636	N/A	6.245	N/A
47	0.649	N/A	6.318	N/A
48	0.666	N/A	6.418	N/A
49	0.679	N/A	6.540	N/A
50	0.696	N/A	6.690	N/A
51	0.712	N/A	6.875	N/A
52	0.727	N/A	7.029	N/A
53	0.745	N/A	7.129	N/A
54	0.760	N/A	7.359	N/A
55	0.776	N/A	7.722	N/A
56	0.797	N/A	8.017	N/A
57	0.814	N/A	8.249	N/A
58	0.826	N/A	8.425	N/A
59	0.837	N/A	8.563	N/A
60	0.849	N/A	8.686	N/A
61	0.862	N/A	8.804	N/A
62	0.872	N/A	8.916	N/A
63	0.887	N/A	9.025	N/A
64	0.895	N/A	9.138	N/A
65	0.903	N/A	9.250	N/A

## POLLUTION CONTROL BOARD

## NOTICE OF EXPEDITED CORRECTION

66	0.925	N/A	9.354	N/A
67	0.933	N/A	9.457	N/A
68	0.945	N/A	9.575	N/A
69	0.959	N/A	9.728	N/A
70	0.970	N/A	9.938	N/A
71	0.980	N/A	10.140	N/A
72	0.988	N/A	10.222	N/A
73	0.997	N/A	10.261	N/A
74	1.022	N/A	10.278	N/A
75	1.037	N/A	10.290	N/A
76	1.051	N/A	10.715	N/A
77	1.064	N/A	10.790	N/A
78	1.075	N/A	10.844	N/A
79	1.087	N/A	10.921	N/A
80	1.097	N/A	11.010	N/A
81	1.105	N/A	11.090	N/A
82	1.114	N/A	11.136	N/A
83	1.136	N/A	11.136	N/A
84	1.160	N/A	11.165	N/A
85	1.182	N/A	11.191	N/A
86	1.201	N/A	11.205	N/A
87	1.217	N/A	11.211	N/A
88	1.233	N/A	11.211	N/A
89	1.248	N/A	11.211	N/A
90	1.262	N/A	11.211	N/A
91	1.271	N/A	11.220	N/A
92	1.279	N/A	11.294	N/A
93	1.287	N/A	11.332	N/A
94	1.295	N/A	11.355	N/A
95	1.302	N/A	11.383	N/A
96	1.309	N/A	11.410	N/A
97	1.316	N/A	11.433	N/A
98	1.325	N/A	11.516	N/A
99	1.339	N/A	11.820	N/A
100	1.356	N/A	12.104	N/A
101	1.365	N/A	12.344	N/A
102	1.378	N/A	12.781	N/A
103	1.397	N/A	13.472	N/A
104	1.420	N/A	14.405	N/A
105	1.445	N/A	14.808	N/A
106	1.470	N/A	14.965	N/A
107	1.491	N/A	15.121	N/A
108	1.506	N/A	15.372	N/A
109	1.517	0.151	15.530	1.113
110	1.528	0.159	15.687	1.213
111	1.542	0.172	16.018	1.344
112	1.559	0.186	16.527	1.399
113	1.578	0.199	16.810	1.520

## POLLUTION CONTROL BOARD

## NOTICE OF EXPEDITED CORRECTION

114	1.594	0.207	16.961	1.640
115	1.605	0.216	17.120	1.684
116	1.615	0.229	17.135	1.693
117	1.625	0.235	17.249	1.786
118	1.642	0.240	17.451	2.007
119	1.670	0.245	17.509	2.084
120	1.694	0.261	17.605	2.179
121	1.705	0.267	17.734	2.264
122	1.717	0.277	18.049	2.328
123	1.732	0.287	18.447	2.375
124	1.747	0.298	18.592	2.437
125	1.763	0.308	18.657	2.543
126	1.779	0.316	18.796	2.593
127	1.795	0.322	18.952	2.641
128	1.810	0.329	19.137	2.663
129	1.823	0.338	19.329	2.672
130	1.835	0.346	19.519	2.676
131	1.845	0.354	19.707	2.683
132	1.854	0.356	19.882	2.817
133	1.862	0.357	19.905	2.992
134	1.870	0.359	20.049	3.111
135	1.883	0.362	20.460	3.234
136	1.888	0.364	20.746	3.304
137	1.896	0.368	21.068	3.310
138	1.911	0.378	21.380	3.320
139	1.928	0.391	21.748	3.354
140	1.949	0.402	22.046	3.436
141	1.969	0.408	22.348	3.443
142	1.982	0.422	22.397	3.452
143	1.999	0.428	22.407	3.490
144	2.011	0.432	22.417	3.552
145	2.022	0.434	22.922	3.588
146	2.035	0.439	22.951	3.600
147	2.043	0.450	22.976	3.616
148	2.049	0.460	23.017	3.627
149	2.063	0.467	23.073	3.636
150	2.085	0.472	23.161	3.676
151	2.104	0.480	23.218	3.882
152	2.117	0.491	23.253	4.011
153	2.127	0.503	23.337	4.047
154	2.138	0.505	23.425	4.067
155	2.152	0.515	23.534	4.081
156	2.168	0.522	23.652	4.116
157	2.186	0.527	23.739	4.251
158	2.205	0.537	24.606	5.099
159	2.224	0.549	25.615	5.383
160	2.242	0.568	26.073	6.362
161	2.268	0.586	28.496	7.926

## POLLUTION CONTROL BROAD

## NOTICE OF EXPEDITED CORRECTION

162	2.308	0.610	29.772	8.429
163	2.352	0.648	31.056	9.201
164	2.406	0.677	33.351	10.825
165	2.421	0.699	34.890	12.291
166	2.435	0.720	35.937	13.366
167	2.470	0.738	37.012	14.428
168	2.501	0.767	37.892	15.318
169	2.537	0.828	39.028	15.699
170	2.571	0.855	40.406	16.073
171	2.625	0.869	41.379	16.475
172	2.657	0.885	42.033	17.158
173	2.683	0.900	42.432	17.532
174	2.701	0.941	42.742	17.965
175	2.717	0.979	43.399	18.242
176	2.732	1.002	43.895	18.283
177	2.756	1.025	44.227	18.480
178	2.781	1.047	44.926	19.576
179	2.811	1.065	45.256	20.015
180	2.853	1.089	45.553	20.203
181	2.898	1.109	45.753	20.433
182	2.946	1.133	46.210	21.025
183	2.988	1.158	47.017	21.882
184	3.023	1.184	48.185	22.204
185	3.057	1.209	48.741	22.859
186	3.076	1.222	49.462	23.533
187	3.101	1.231	50.313	24.281
188	3.120	1.239	51.285	25.078
189	3.136	1.254	52.076	25.276
190	3.151	1.278	52.857	25.578
191	3.163	1.300	52.876	25.859
192	3.209	1.313	53.067	25.985
193	3.223	1.324	53.777	26.153
194	3.237	1.340	54.242	26.582
195	3.263	1.367	54.489	27.067
196	3.302	1.387	54.601	27.456
197	3.338	1.402	54.912	27.805
198	3.372	1.417	55.588	28.070
199	3.390	1.432	56.266	28.590
200	3.428	1.446	56.617	28.914
201	3.470	1.460	56.863	29.063
202	3.493	1.477	57.204	29.502
203	3.509	1.492	57.371	29.697
204	3.522	1.501	57.487	29.713
205	3.533	1.510	57.728	29.783
206	3.550	1.522	58.097	29.942
207	3.578	1.561	58.572	30.284
208	3.607	1.585	59.024	30.755
209	3.630	1.597	59.321	31.287

## POLLUTION CONTROL BROAD

## NOTICE OF EXPEDITED CORRECTION

210	3.658	1.607	59.715	31.549
211	3.701	1.627	60.045	31.820
212	3.745778	1.645	60.453	32.250
213	3.778776	1.656	60.935	32.546
214	3.814	1.663	61.307	32.808
215	3.825	1.669	61.666	33.060
216	3.835	1.674	62.148	33.204
217	3.844	1.685	62.532	33.341
218	3.853	1.700	62.546	33.414
219	3.864	1.704	62.559	33.514
220	3.874	1.706	62.570	33.640
221	3.891	1.709	62.846	33.692
222	3.928	1.711	63.097	33.711
223	3.966	1.714	63.150	33.733
224	4.008	1.718	63.150	33.770
225	4.010	1.721	63.150	33.796
226	4.012	1.723	63.150	33.810
227	4.016	1.726	63.150	33.821
228	4.019	1.729	63.150	33.839
229	4.057	1.731	63.150	33.865
230	4.065	1.733	63.150	33.894
231	4.071	1.735	63.150	33.918
232	4.073	1.743	63.150	33.944
233	4.075	1.749	63.150	33.985
234	4.077	1.753	63.153	34.014
235	4.079	1.757	63.159	34.032
236	4.081	1.762	63.173	34.051
237	4.083	1.767	63.193	34.067
238	4.084	1.772	63.214	34.079
239	4.085	1.776	63.233	34.085

(Source: Expedited correction at 22 Ill. Reg. 21120, effective  
JUL 13 1998)



JOINT COMMITTEE ON ADMINISTRATIVE RULES  
ILLINOIS GENERAL ASSEMBLY

SECOND NOTICES RECEIVED

The following second notices were received by the Joint Committee on Administrative Rules during the period of November 17, 1998 through November 23, 1998 and have been scheduled for review by the Committee at its December 15, 1998 meeting in Chicago. Other items not contained in this published list may also be considered. Members of the public wishing to express their views with respect to a rule should submit written comments to the Committee at the following address: Joint Committee on Administrative Rules, 700 Stratton Bldg., Springfield IL 62706.

Second Notice Expires	Agency and Rule	Start Of First Notice	JCAR Meeting
12/31/98	Department of Human Services, General Assistance (89 Ill Adm Code 114)	9/11/98 22 Ill Reg 16133	12/15/98
12/31/98	Department of Human Services, Temporary Assistance for Needy Families (89 Ill Adm Code 112)	9/11/98 22 Ill Reg 16135	12/15/98
12/31/98	Department of Human Services, Aid to the Aged, Blind or Disabled (89 Ill Adm Code 113)	9/11/98 22 Ill Reg 16131	12/15/98
12/31/98	Department of Public Health, Private Sewage Disposal Code (77 Ill Adm Code 905)	4/10/98 22 Ill Reg 6595	12/15/98
1/1/99	Department of Employment Security, Determination of Unemployment Contributions (56 Ill Adm Code 2770)	10/2/98 22 Ill Reg 17180	12/15/98
1/2/99	Department of Agriculture, Meat and Poultry Inspection Act (8 Ill Adm Code 125)	9/18/98 22 Ill Reg 16391	12/15/98
1/6/99	Illinois Commerce Commission, Uniform System of Accounts for Gas Utilities (83 Ill Adm Code 505)	9/11/98 22 Ill Reg 16095	12/15/98
1/6/99	Illinois Commerce Commission, Uniform System of Accounts for Electric Utilities (83 Ill Adm Code 415)	9/11/98 22 Ill Reg 16091	12/15/98

JOINT COMMITTEE ON ADMINISTRATIVE RULES  
ILLINOIS GENERAL ASSEMBLY

SECOND NOTICES RECEIVED

1/6/99	Department of Public Aid, Children's Health Insurance Program (89 Ill Adm Code 125)	8/28/98 22 Ill Reg 15511	12/15/98
1/6/99	Department of Public Aid, Special Eligibility Groups (89 Ill Adm Code 118)	8/28/98 22 Ill Reg 15514	12/15/98
1/6/99	Department of Insurance, Annual Privilege Tax (50 Ill Adm Code 2510)	9/25/98 22 Ill Reg 16873	12/15/98
1/6/99	Department of Insurance, Annual Retaliatory Tax (50 Ill Adm Code 2515)	9/25/98 22 Ill Reg 16910	12/15/98
1/6/99	Department of Insurance, Annual State Fire Marshal Tax (50 Ill Adm Code 2520)	9/25/98 22 Ill Reg 16926	12/15/98
1/6/99	Department of Insurance, Fees and Charges (50 Ill Adm Code 2505)	9/25/99 22 Ill Reg 16936	12/15/98
1/6/99	Department of Insurance, General Provisions (50 Ill Adm Code 2500)	9/25/98 22 Ill Reg 16946	12/15/98
1/6/99	Department of Insurance, Overpayments, Refunds, Amendments and Penalties (50 Ill Adm Code 2525)	9/25/98 22 Ill Reg 16956	12/15/98

Rules acted upon during the period from October 16 (Issue 42, 1998) through December 28, 1998 (Issue 52) are listed in the Issues Index by Title number, Part number and Issue number. For example, 50 Ill. Adm. Code 4401 published in Issue 40 will be listed as 50-4401-40. The letter "R" designates a rule that is being repealed. Inquiries about the Issues Index may be directed to the Administrative Code Division at 217-782-4414 or [jnaate@cegate.sos.state.il.us](mailto:jnaate@cegate.sos.state.il.us) (Internet address).

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